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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1924

No. [redacted] 187

ISOM GRAYSON, MICEY KEYS, PAULINA CAROLINA, ET AL., PLAINTIFFS IN ERROR,

vs.

JAMES A. HARRIS, WILLIAM H. HARRIS, JAMES H. KENNEDY, ET AL.

and on writ of certiorari to

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

p 64 66

FILED OCTOBER 1, 1923

(29,896)

Petition for certiorari granted

Nov. 12, 1923

(29,896)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 586

ISOM GRAYSON, MICEY KEYS, PAULINA CAROLINA, ET AL., PLAINTIFFS IN ERROR,

vs.

JAMES A. HARRIS, WILLIAM H. HARRIS, JAMES H. KENNEDY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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No. 6,332.

In the District Court for Creek County, Oklahoma.

Isom Grayson, Micey Keys, Paulina Carolina, Alice Carolina, Bertha Grayson, Gertie Carolina, Polly Grayson, Louisa Williams, Dock Grayson, a minor, Zack Grayson, a minor, by Mont Carolina, the next friend of said minors, Delilah Hutton, Sam Haynes, Alice Hunter, Rose Haynes, Rayford Hutton, Sam Stidham, Letha Stehham, Hattie Givens, George Harrison, Jennie Boyce, a minor, Clarence Boyce, a minor, Lucy Boyce, a minor, Hattie Boyce, a minor, Beatrice Boyce, a minor, by George Harrison, the next friend of said minors, Joe McIntosh, Wiley McIntosh, John McIntosh, George McIntosh, Rebecca McIntosh, Elzora Fields, Mammie Davis, nee Nevins, Willie Smith, Johanna Smith, Henry Smith, George Smith, Prince Lewis, Eddie Lewis, Sarah Lewis McSwain, Jesse Lewis, Elmore Lewis, a minor, Robert Lewis, a minor, William Lewis Jr., a minor, Lennie Lewis, a minor, by R. J. Dixon, the next friend of said minors, Mary Manuel, Roy McIntosh, Roxyann McIntosh, Berry Friday, Louis Friday, Jack Friday, Bennie Friday, Billy Friday, Katie Harrison, Julia Durant, Edward Friday, Beecher Watley, a minor, Jack Watley, a minor, Beatrice Watley, a minor, Myrtle Wayley, a minor, by Jim Watley, the next friend of said minors, Dorthey Grayson, Billy Grayson, Leona Grayson, Katie Grayson, Lucy Grayson, Janey Grayson, Cooper Grayson, a minor, by Billy Grayson, his next friend, Elsie Edwards, Sam Tobler, Dick Tobler, Roxanna Sneed, Sophia Smith, Sandy Tobler, Lidia Connor, Ben Tobler, Arizona Tobler, Bula Tobler, a minor, Lula Tobler, a minor, Pleas Tobler, a minor, Ida Tobler, a minor, by Lewis Adams, the next friend of said minors, Mariah Jenkins, Pauline Tobler, Aaron Tobler, Alice McNack, Sandy Grayson, Dick Thursday, Peter Hawkins, Joe Hawkins, Sambo Hawkins, Dave Hawkins, Robert

Hawkins, Mack Hawkins, Tommy White, Rachie White, Jessie Casey, Galula Hawkins, a minor, by her next friend, P. J. Shinn, Patsey Harrison, Rose Corbray, Mary Corbray, Nettie Perry, Esther Lee Perry, Joe Stephens, Morris Stephens, Joe Grayson, Leah Cully, Phoebe White, Micy Goff, Gracie Watts, Beatrice Watts, Esther Rowe, Monday Jamison, Jeff Murrell, a minor, Percilla Murrell, a minor, Lou Daisy Merrill, a minor, by P. F. Jones, the next friend of said minors, Jim Samuels, Amy Wilson, Thomas Boone, William London, Fred Frowe, Georgie Frowe, Florence McKillop, James McKillop, Martha McKillop, Victoria Davis, a minor, Annie Davis, a minor, by J. M. Glass, the next friend of said minors, Jonnie Brown, Wallace Brown, Nellie Brown, Edward Brown, Russell Brown, Harry Brown, John Brown, Paul Brown, Rose Manuels, Willie Brown, Robert Brown, Ivy Grayson, Dilsy Hope, Richard Grayson, Mima Byrd, Bettie Tucker, Luther Jones, Robert Jones, Wyatt Jones, Alice Jones, Plaintiffs,

vs.

James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil and Gas Company, James Brann, Dixie Q. Brown, Jim Colbert, and Warlacy, Defendants.

Petition.

First.

The plaintiffs state that they and each of them, are citizens of the Creek Nation and members of the Creek Tribe of Indians; that they are the owners in fee, each, of an undivided interest and portion of the lands hereinafter described, in the proportions hereinafter set forth, and that they derived their title thereto as hereinafter stated to wit:

The plaintiffs state that Nancy Colbert, deceased, was a Creek Freedman, a citizen of the Creek Nation, and duly enrolled as such on the Approved Creek Freedman roll under No. 5641; that Louisa Colbert, deceased, was a Creek Freed-

man, a citizen of the Creek Nation and duly enrolled as such on the Approved Creek Freedman roll under No. 5639; that Garfield Colbert, deceased, was a Creek Freedman, a citizen of the Creek Nation, and duly enrolled as such on the Approved Creek Freedman roll under No. 5640; that Gertrude Grayson, deceased, was a Creek Freedman, a citizen of the Creek Nation, and duly enrolled as such, on the Approved Creek Freedman roll under No. 5684; that Jim Colbert is a Creek Freedman, a citizen of the Creek Nation and duly enrolled as such on said roll under No. 2645.

The plaintiffs further state that the said Nancy Colbert, died intestate, without issue and never having been married, about March 1st, 1900, leaving her surviving, Jim Colbert, her father, and the said Louisa Colbert, since deceased, her mother; that the said Louisa Colbert died intestate about March 7th, 1900, leaving her surviving Jim Colbert, her husband, Garfield Colbert, since deceased, her son, and the said Gertrude Grayson, since deceased, her daughter, and no other descendants.

That the said Garfield Colbert died intestate, without issue and never having been married, in the month of June, 1900, leaving him surviving Jim Colbert, his father, and the said Gertrude Grayson, since deceased, his half sister, and no other brothers or sisters nor children of deceased brothers and sisters.

The plaintiffs further state that on the 9th day of July, 1906, there was allotted by the Commission to the Five Civilized Tribes in the name of Nancy Colbert to her Creek heirs, as the proportional share of the lands of the Creek Nation to which she would have been entitled if living, the following described lands to wit:

Lot Two, and the Northeast quarter of the Northeast quarter, and the Northwest quarter of the Northwest quarter of the Southeast quarter of the Northeast quarter of Section Thirty-one, in Township Seventeen, north, of Range Twelve,

east, and the Northwest quarter of the Southwest quarter of Section Seventeen, and the East Half of the Southeast quarter of the Southeast quarter, and the Northwest quarter of the Southeast quarter of the Southeast quarter, and the East Half of the Southwest quarter of Southeast quarter of the Southeast quarter, and the Northwest quarter of the Southwest quarter of the Southeast quarter of the Southeast quarter of Section Twenty, all in Township Eighteen, North, of Range Twelve East, and all in Creek County, Oklahoma. A copy of the certificate of which allotment is hereto attached marked "Exhibit A" and made a part hereof.

That on the 9th day of July, 1906, there was allotted by the Commission to the Five Civilized Tribes in the name of Garfield Colbert, to his Creek heirs, as the proportional share of the lands of the Creek Nation to which he would have been entitled if living the following described lands, to wit:

The Southwest quarter of the Northeast quarter and the Southwest quarter of the Northwest quarter of Section Twenty-nine, and the North half of the Northeast quarter of Section Thirty, all in Township Eighteen, North of Range Twelve, East, in Creek County, Okla. A copy of the certificate of which allotment is hereto attached, marked "Exhibit B," and made a part hereof.

The plaintiffs further state that upon the allotment of the above described lands the said Gertrude Grayson, since deceased, and Jim Colbert, as the only surviving Creek heirs at law of the said Nancy Colbert and Garfield Colbert, became the owners in fee, each, of an undivided one-half of said allotments of lands, and became vested of the full legal and equitable title thereto as tenants in common.

The plaintiffs further state that the said Gertrude Grayson, deceased, was the illegitimate daughter of the said Louisa Colbert deceased, her putative father being John Foster, a non-citizen of the Creek Nation and not a Creek descendant. That George Tobler, deceased, was the father of the said

Louisa Colbert, deceased, and that Cloria Grayson, also known as Cloria Ross, is the mother of said Louisa Colbert; that the said George Tobler was a Creek Freedman and a citizen of the Creek Nation; that the said Cloria Grayson is a non-citizen of the Creek Nation and is not a Creek descendant.

The plaintiff further states that the said George Tobler, died about the year 1890, leaving him surviving his daughter Louisa Colbert, and his wife Cloria Grayson herein before mentioned and no other descendants nor father or mother. That the said George Tobler had the following brothers and sisters, namely: Micy Keys, Bucher Grayson, Friday Tobler, Easy Rowe, Phoebe Stephens, Mimmie Grayson, Hannah Grayson, Sampson Stidham, Jim Boy Tobler and Dinah Grayson all of whom are Creek citizens and members of the Creek Tribe of Indians, and all of whom are now dead except Micy Keys, that all of the said deceased brothers and sisters of the said George Tobler, left surviving them Creek descendants who are hereinafter named and are all related to them and to the said George Tobler as hereinafter set forth.

The plaintiffs further state that the said Gertrude Grayson died, intestate, without issue and never having been married on the ____ day of April, 1907, in which is now Mayes County, Okla., possessed in fee of an undivided one-half of the lands herein before described and leaving her surviving as her only Creek heirs at law, the said Micy Keys and the persons hereinafter named as the surviving descendants of the above named deceased brothers and sisters of the said George Tobler, deceased, and that upon the death of the said Gertrude Grayson as her Creek heir at law, the said Micy Keys and the surviving descendants hereinafter named of the brothers and sisters of the said George Tobler, deceased, became the owners in fee of the lands by her possessed as hereinbefore set forth.

The plaintiffs further state that the undivided one-half of the land above described of which the said Gertrude Grayson died possessed as hereinbefore set forth, upon her death

became vested in fee in the surviving Creek heirs of the said Gertrude Grayson in the proportions and parts hereinafter set forth.

The said surviving Creek heirs of the said Gertrude Grayson, deceased, and their kinship and the proportional shares of each as such heirs in the undivided one-half of the lands herein described are as follows, to wit:

1. Micy Keys, who is a sister of the said George Tobler, deceased, who was the father of the said Louisa Colbert, deceased, who was the mother of the said Gertrude Grayson deceased, a 1/10 part.

(Descendants of Bucher Grayson.)

2. Isom Grayson, who was son of Bucher Grayson, deceased, who was a brother of the said George Tobler, deceased, a 1/30 part.

The following named children of Ceaser Grayson, deceased, who was a son of the said Bucher Grayson, deceased, to wit:

3. Paulina Carolina, a 1/240 part.
4. Alice Carolina, a 1/240 part.
5. Bertha Grayson a 1/240 part.
6. Gertie Carolina a 1/240 part.
7. Polly Grayson a 1/240 part.
8. Louisa Williams a 1/240 part.
9. Dock Grayson a 1/240 part.

The only son of Zack Grayson, deceased, who was a son of the said Ceaser Grayson, deceased, to wit:

10. Zack Grayson, a 1/240 part.

The following named children of Louisa Haynes, deceased, who was a daughter of the said Butcher Grayson, deceased, to wit:

11. Delilah Hutton, a 1/180 part.
12. Sam Haynes a 1/180 part.

13. Alice Hunter a 1/180 part.
14. Rose Haynes a 1/180 part.
15. Rayford Hutton a 1/180 part.

The following named children of Adiline Stidham, deceased, who was a daughter of the said Louisa Haynes, deceased, to wit:

16. Sam Stidham a 1/360 part.
17. Letha Stidham a 1/360 part.

(Descendants of Sampson Stidham.)

The children of Lucy Lester, deceased, who was a daughter of Sampson Stidham, deceased, who was a brother of the said George Tobler, deceased, to wit:

18. Hattie Givins a 1/90 part.
19. George Harrison a 1/90 part.

The following named children of Lizzie Boyce, deceased, who was a daughter of the said Lucy Lester, deceased.

20. Jennie Boyce, a 1/450 part.
21. Clarence Boyce a 1/450 part.
22. Lucy Boyce a 1/450 part.
23. Hattie Boyce a 1/450 part.
24. Beatrice Boyce a 1/450 part.

The following named children of Tamie McIntosh, deceased, who was a daughter of the said Sampson Stidham, deceased, to wit:

25. Joe McIntosh a 1/210 part.
26. Wiley McIntosh a 1/210 part.
27. John McIntosh a 1/210 part.
28. George McIntosh a 1/210 part.
29. Rebecca McIntosh a 1/210 part.
30. Elzora Fields a 1/210 part.

The following named children of Elsie McIntosh, de-

ceased, who was a daaughter of the said Jamie McIntosh, deceased, to wit:

31. Mammie Davis, nee Nevins a 1/1050 part.
32. Willie Smith a 1/1050 part.
33. Johanna Smith a 1/1050 part.
34. Henry Smith a 1/1050 part.
35. George Smith a 1/1050 part.

A son of Lizzie Fisher, deceased, who was a daughter of the said Sampson Stidham, deceased, to wit:

36. Prince Lewis a 1/120 part.

A son of Hartless Lewis, deceased, who was a son of the said Lizzie Fisher, deceased, to wit:

37. Eddie Lewis a 1/120 part.

The following named children of William Lewis, deceased, who was a son of the said Lizzie Fisher, deceased, to wit:

38. Elmore Lewis a 1/720 part.
39. Sarah Lewis McSwain a 1/720 part.
40. Jesse Lewis a 1/720 part.
41. Robert Lewis a 1/720 part.
42. William Lewis a 1/720 part.
43. Lennie Lewis a 1/720 part.

The following named children of Katie McIntosh, deceased, who was a daughter of the said Lizzie Fisher, deceased, to wit:

44. Mary Manuel a 1/360 part.
45. Roy McIntosh a 1/360 part.
46. Roxyann McIntosh a 1/360 part.

(Descendants of Friday Tobler.)

The following named children of Dave Friday, deceased, who was the son of Jack Friday, deceased, who was a son of Friday Tobler, deceased, who was a brother of the said George Tobler, deceased, to wit:

47. Berry Friday a 1/100 part.
48. Louis Friday a 1/100 part.
49. Jack Friday a 1/100 part.
50. Bennie Friday a 1/100 part.
51. Billy Friday a 1/100 part.
52. Katie Harrison a 1/100 part.
53. Julia Durant a 1/100 part.
54. Edward Friday a 1/100 part.

The following named children of Rebecca Watley, deceased, who was a daughter of the said Dave Friday, deceased, to wit:

55. Beacher Watley a 1/400 part.
56. Jack Watley a 1/400 part.
57. Beatrice Watley a 1/400 part.
58. Myrtle Watley a 1/400 part.

The daughter of Anna Vans, deceased, who was the daughter of the said Dave Friday, deceased, to wit:

59. Dorthy Grayson a 1/100 part.

(Descendants of Dinah Grayson.)

The following named children of Tommy Grayson, deceased, who was the son of Dinah Grayson, deceased, who was the sister of the said George Tobler, deceased, to wit:

60. Billy Grayson a 1/60 part.
61. Leona Grayson a 1/60 part.
62. Katie Grayson a 1/60 part.
63. Lucy Grayson a 1/60 part.
64. Janey Grayson a 1/60 part.
65. Cooper Grayson a 1/60 part.

(Descendants of Jim Boy Tobler.)

The following named children of Jim Boy Tobler, deceased, who was a brother of the said George Tobler, deceased, to wit:

66. Elsie Edwards a 1/130 part.
67. Sam Tobler a 1/130 part.
68. Dick Tobler a 1/130 part.
69. Roxanna Sneed a 1/130 part.
70. Sophia Smith a 1/130 part.
71. Sandy Tobler a 1/130 part.
72. Lidia Connor a 1/130 part.
73. Ben Tobler a 1/130 part.

A daughter of Jack Tobler, deceased, who was a son of the said Jim Boy Tobler, deceased, to wit:

74. Arizona Tobler a 1/130 part.

The following named children of Bob Tobler, deceased, who was a son of the said Jim Boy Tobler, to wit:

75. Bula Tobler a 1/260 part.
76. Lula Tobler a 1/260 part.

The following named children of Fred Tobler, deceased, who was a son of the said Jim Boy Tobler, deceased, to wit:

77. Pleas Tobler a 1/260 part.
78. Ida Tobler a 1/260 part.

The following named children of Jack Tobler, deceased, who was a son of the said Jim Boy Tobler, deceased, to wit:

79. Mariah Jenkins a 1/260 part.
80. Pauline Tobler a 1/260 part.

The following named children of Aaron Tobler, deceased, who was a son of the said Jim Boy Tobler, deceased, to wit:

81. Aaron Tobler a 1/390 part.
82. Alice McNac a 1/390 part.

A son of Lula Tobler, deceased, who was a daughter of the said Aaron Tobler, deceased, to wit:

83. Sandy Grayson a 1/390 part.

(Descendants of Hannah Grayson.)

A son of Hannah Grayson, deceased, who was a sister of the said George Tobler, deceased, to wit:

84. Dick Thursday a 1/40 part.

The following named children of Leah Hawkins, deceased, who was a daughter of the said Hannah Grayson, deceased, to wit:

85. Peter Hawkins a 1/320 part.
86. Joe Hawkins a 1/320 part.
87. Sambo Hawkins a 1/320 part.
88. Dave Hawkins a 1/320 part.
89. Robert Hawkins a 1/320 part.
90. Mack Hawkins a 1/320 part.

The following named children of Hager White, deceased, who was a daughter of the said Leah Hawkins, deceased, to wit:

91. Tommy White a 1/960 part.
92. Rachie White a 1/960 part.
93. Jessie Casey a 1/960 part.

A daughter of Willie Hawkins, deceased, whom was a son of the said Leah Hawkins, deceased, to wit:

94. Galula Hawkins a 1/320 part.

A daughter of Sibbie Ross, deceased, who was the daughter of the said Hannah Grayson, deceased, to wit:

95. Patsy Harrison a 1/40 part.

The following named children of Katie Corbray, deceased, who was a daughter of the said Hannah Grayson, deceased, to wit:

96. Rose Corbray a 1/120 part.
97. Mary Corbray a 1/120 part.

The following named children of Hannah Perry, de-

ceased, who was a daughter of the said Katie Corbray, deceased, to wit:

98. Nettie Perry a 1/240 part.
99. Esther Lee Perry a 1/240 part.

(Descendants of Phoebe Stephens.)

The following named children of Phoebe Stephens, deceased, who was a sister of the said George Tobler, deceased, to wit:

100. Joe Stephens a 1/40 part.
101. Morris Stephens a 1/40 part.

The following named children of Sonny Grayson, deceased, who was a son of the said Phoebe Stephens, to wit:

102. Joe Grayson a 1/280 part.
103. Leah Cully a 1/280 part.
104. Phoebe White a 1/280 part.
105. Micey Goff a 1/280 part.
106. Gracie Watts a 1/280 part.
107. Beatrice Watts a 1/280 part.

A daughter of Emmie Rowe, deceased, who was a daughter of the said Sonny Grayson, deceased, to wit:

108. Esther Rowe a 1/280 part.

A son of Leah Jamison, deceased, who was a daughter of the said Phoebe Stephens, deceased, to wit:

109. Monday Jamison a 1/80 part.

The following named children of Henry Murrell, deceased, who was a son of Leah Jamison, deceased, to wit:

110. Jeff Murrell a 1/240 part.
111. Percilla Murrell a 1/240 part.
112. Lou Daisy Murrell a 1/240 part.

(Descendants of Easy Rowe.)

The following named children of Easy Rowe, deceased,

who was a sister of the said George Tobler, deceased, to wit:

113. Jim Samuels a 1/50 part.
114. Amy Wilson a 1/50 part.

A son of Cloa Marshall, deceased, who was a daughter of the said Easy Rowe, deceased, to wit:

115. Thomas Boone a 1/150 part.

The following named children of Celia Frowe, deceased, who was a daughter of the said Cloa Marshall, deceased, to wit:

116. William London a 1/450 part.
117. Fred Frowe a 1/450 part.
118. Georgie Frowe a 1/450 part.

The following named children of Katie McKillop, deceased, who was a daughter of the said Cloa Marshall, deceased, to wit:

119. Florence McKillop a 1/750 part.
120. James McKillop a 1/750 part.
121. Martha McKillop a 1/750 part.
122. Victoria Davis a 1/750 part.
123. Annie Davis a 1/750 part.

The following named children of Sampson Brown, deceased, who was a son of the said Easy Rowe, deceased, to wit:

124. Jonny Brown a 1/550 part.
125. Wallace Brown a 1/550 part.
126. Nellie Brown a 1/550 part.
127. Edward Brown a 1/550 part.
128. Russell Brown a 1/550 part.
129. Harry Brown a 1/550 part.
130. John Brown a 1/550 part.
131. Paul Brown a 1/550 part.
132. Rose Manuel a 1/550 part.

133. Willie Brown a 1/550 part.
134. Robert Brown a 1/550 part.

A daughter of Elisa Jackson, deceased, who was a daughter of Rose Alexander, deceased, who was a daughter of the said Easy Rowe, deceased, to wit:

135. Ivy Grayson a 1/50 part.

(Descendants of Mimmie Grayson.)

The following named children of Mimmie Grayson, deceased, who was the sister of the said George Tobler, deceased, to wit:

136. Dilsy Hope a 1/30 part.
137. Richard Grayson a 1/30 part.

The following named children of Dinah Tucker, deceased, who was a daughter of the said Mimmie Grayson, deceased, to wit:

138. Mima Byrd a 1/90 part.
139. Bettie Tucker a 1/90 part.

The following named children of Mary Jones, deceased, who was a daughter of the said Dinah Tucker, deceased, to wit:

140. Luther Jones a 1/360 part.
141. Robert Jones a 1/360 part.
142. Wyatt Jones a 1/360 part.
143. Alice Jones a 1/360 part.

The plaintiffs further state that they are entitled to the immediate possession of the land herein described as tenants in common with each other, and the defendants herein; that the defendants James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil & Gas Company, James Brann, and Dickson Q. Brown, are in possession of said lands claiming to be the owners thereof to the exclusion of the plaintiffs, in and to said lands and every part thereof; that the possession of

said defendants of the said lands to the exclusion of the plaintiffs is wrongful and unlawful and that they the said defendants, James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil & Gas Company, James Brann, and Dickson Q. Brown, wrongfully and unlawfully keep the plaintiffs, each and all of them out of the possession of said lands and every part thereof.

SECOND.

The plaintiffs for a further and a second cause of action against these defendants hereby refer to their first and foregoing cause of action, and make the allegations therein contained, parts of this their second cause of action as though fully set forth herein, and state that of the land described in the first and foregoing cause of action, of this petition, each of them is the owner in fee of the following undivided portions and interests, to wit:

Micy Keys a 1/20, Isom Grayson a 1/60, Paulina Carolina a 1/480, Alice Carolina a 1/480, Bertha Grayson a 1/480, Gertie Carolina a 1/480, Polly Grayson a 1/480, Louisa Williams a 1/480, Dock Grayson a 1/480, Zack Grayson a 1/480, Delilah Hutton a 1/360, Sam Haynes a 1/360, Alice Hunter a 1/360, Rose Haynes a 1/360, Rayford Hutton a 1/360, Sam Stidham a 1/720, Letha Stedham a 1/720, Hattie Givens a 1/180, George Harrison a 1/180, Jennie Boyce a 1/900, Clarence Boyce a 1/900, Lucy Boyce a 1/900, Hattie Boyce a 1/900, Beatrice Boyce a 1/900, Joe McIntosh a 1/420, Willie McIntosh a 1/420, John McIntosh a 1/420, George McIntosh a 1/420, Rebecca McIntosh a 1/420, Elzora Fields a 1/420, Mamie Davis a 1/2100, Willie Smith a 1/2100, Johanna Smith a 1/2100, Henry Smith a 1/2100 George Smith a 1/2100, Prince Lewis a 1/240, Eddie Lewis a 1/240, Elmore Lewis a 1/1440, Sarah Lewis McSwain a 1/1440, Jessie Lewis a 1/1440, Robert Lewis a 1/1440, William Lewis a 1/1440, Lennie Lewis a 1/1440, Mary Manuel a 1/720, Roy McIntosh a 1/720, Roxyann McIntosh a 1/720, Berry Friday a 1/200, Louis Friday a 1/200, Jack Friday a 1/200, Bennie Friday a

1/200, Billy Friday a 1/200, Katie Harrison a 1/200, Julia Durant a 1/200, Edward Friday a 1/200, Beacher Watley a 1/800, Jack Watley a 1/800, Beatrice Watley a 1/800, Myrtle Watley a 1/800, Dorthey Grayson a 1/200, Billie Grayson a 1/120, Leona Grayson a 1/120, Katie Grayson a 1/120, Lucy Grayson a 1/120, Janney Grayson a 1/120, Cooper Grayson a 1/120, Elsie Edwards a 1/260, Sam Tobler a 1/260, Dick Tobler a 1/260, Roxanna Sneed a 1/260, Sophia Smith a 1/260, Sandy Tobler a 1/260, Lydia Connor a 1/260, Ben Tobler a 1/260, Arizona Tobler a 1/260, Bula Tobler a 1/520, Lula Tobler a 1/520, Pleas Tobler a 1/520, Ida Tobler a 1/520, Mirah Jenkins a 1/520, Paulina Tobler a 1/520, Aaron Tobler a 1/780, Alice McNack a 1/780, Sandy Tobler a 1/780, Dick Thursday a 1/80, Peter Hawkins a 1/640, Joe Hawkins a 1/640, Sambo Hawkins a 1/640, Dave Hawkins a 1/640, Robert Hawkins a 1/640, Mack Hawkins a 1/640, Tommy White a 1/1920, Rachie White a 1/1920, Jessie Casey a 1/1920, Galula Hawkins a 1/640, Patsey Harrison a 1/80, Rose Corbray 1/240, Mary Corbray 1/240, Nettie Berry a 1/480, Esther Lee Perry a 1/480, Joe Stephens a 1/80, Morris a 1/80, Joe Grayson a 1/560, Leah Cully a 1/560, Phoebe White a 1/560, Micy Goff a 1/560, Gracie Watts a 1/560, Beatrice Watts a 1/560, Esther Rowe a 1/560, Monday Jamison a 1/160, Jeff Murrell a 1/480, Pruscilla Murrell a 1/480, Lou Daisy Murrell a 1/480, Jim Samuels a 1/100, Emmie Wilson a 1/100, Thomas Boone a 1/300, William London a 1/900, Fred Frowe a 1/900, George Frowe a 1/900, Florence McKillop a 1/1500, James McKillop a 1/1500, Martha McKillop a 1/1500, Victoria Davis a 1/1500, Annie Davis a 1/1500, Jonnie Brown a 1/1100, Wallace Brown a 1/1100, Nellie Brown a 1/1100, Edward Brown a 1/1100, Russell Brown a 1/1100, Harry Brown a 1/1100, John Brown a 1/1100, Paul Brown a 1/1100, Rose Manuel a 1/1100, Willie Brown a 1/1100, Robert Brown a 1/1100, Ivy Grayson a 1/100, Dilsy Hope a 1/60, Richard Grayson a 1/60, Mima Byrd a 1/180, Bettie Tucker a 1/180, Luther Jones a 1/720, Robert Jones a 1/720, Wyatt Jones a 1/720, Alice Jones a 1/720.

The plaintiffs further state that they derive their title to their respective shares, interests and portions, aforesaid in the lands herein described as set forth in the first and foregoing cause of action hereof.

The plaintiffs further state that the defendants, and each of them claim some right, title and interest in said lands, the exact nature and extent of which is to the plaintiffs unknown, and that the defendants or some of them are the owners in fee of certain undivided interests in the lands herein described the extent of which is to the plaintiffs unknown; that the defendants herein should be required to answer and set forth whatever interests, if any, they have in said lands.

The plaintiffs further state that the parties hereto can not agree upon a partition of said lands and that the plaintiffs herein are entitled to a partition thereof.

THIRD.

For a further and a third cause of action, the plaintiffs hereby refer to the first and second causes of action herein stated and make the allegations thereof parts of this their third cause of action as though fully set forth herein, and further state that they and the defendants herein are tenants in common of the lands described in their first cause of action.

The plaintiffs further state that the defendants James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil & Gas Company, James Brann and Dickson Q. Brown disregarding and denying the rights and title of the plaintiffs in and to said lands, entered upon said lands and drilled oil and gas wells thereon and have taken, and are now continuing to take therefrom large quantities of oil and gas, the amount and value of which are to the plaintiffs unknown, and have converted, appropriated and sold and are continuing to take and appropriate all of the same, and the proceeds thereof to their own use and benefit and have refused and still refuse to account to or pay the plaintiffs for their interests therein and portions thereof.

FOURTH.

The plaintiffs for a further and fourth cause of action, refer to the foregoing causes of action in this petition set forth, and make the allegations thereof parts of this their fourth cause of action as though fully set forth herein; and state that the lands described in their first cause of action herein are of great value, principally because of the oil and gas thereunder and therein contained, and that the defendants James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil & Gas Company, James Brann and Dickson Q. Brown have drilled several oil and gas wells thereon and now daily take from said lands large quantitiees of oil and gas and convert and dispose of the same to their own use and benefit, and threaten to and will continue so to do, to the irreparable injury of the plaintiffs; that the taking of said oil and gas from the said lands by the said defendants and the conversion thereof to their own use and benefit is a violation of the rights of the plaintiffs, that the taking of said oil and gas from said lands materially, irreparably and permanently damages said lands and that when the oil and gas deposits underlying said lands are exhausted, the value of said lands will be principally if not wholly destroyed.

The plaintiffs further state that their respective rights and titles in and to said lands and the oil and gas therein contained are well founded and based upon good grounds; that they have no adequate remedy at law and that unless a receiver be appointed by a proper order of this court after due notice and hearing, and authorized to take possession of said lands and the oil and gas wells thereon and proceed to conserve the oil and gas underlying and contained in said lands and impound the same or the proceeds thereof for the use and benefit of these plaintiffs and such of the defendants as have an interest therein, the said defendants last above named, will continue and produce, take and appropriate to their own use and benefit all the oil and gas underlying and contained in said lands, to the permanent, irreparable and material injury to these plaintiffs and in violation of their rights.

Wherefore, the plaintiffs pray judgment against the defendants for restitution and possession of their undivided portions and interests in said lands as set forth and alleged herein, the plaintiffs further pray an order of this Court requiring the defendants to answer and set forth the nature and extent of their respective title and interest in the lands herein described.

The plaintiffs further pray that they be adjudged and decreed to be the owners in fee, each, of the undivided interest of which they allege to be the respective owners as set forth herein, that they and each of them have judgment against the defendants, confirming their title and interest in said lands as herein set forth, and that partition of said lands be made according to the respective rights of the parties interested therein, and that if the same cannot be equitably divided that the lands be sold and the proceeds thereof be divided between the parties interested therein according to their respective rights and interests.

The plaintiffs further pray that the defendants James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil & Gas Company, James Brann and Dixon Q. Brown be required to answer and set forth the quantity and value of the oil and gas they have taken from said lands, either jointly or individually, and to render an account thereof, and that the plaintiffs have judgment against the named defendants for the value of such portions of the oil and gas as they are entitled, and that the said judgment be made a lien against the respective interests of the said named defendants in and to said lands.

The plaintiffs further pray that a receiver be appointed immediately by a proper order of this Court in this case to take possession of said lands and the oil and gas wells thereon and conserve the oil and gas contained in and produced therefrom, and impound the same or the proceeds thereof, pending the final determination of this action for the use and

benefit of these plaintiffs and such of the defendants as may be found to have an interest therein and that the defendants and each of them, their agents and employees and all persons claiming by, through or under them, or any of them, be enjoined and barred from operating said properties for oil and gas or taking oil and gas therefrom or selling, or otherwise diposing thereof, or in any manner interfering with the Court's receiver in operating said properties pending the determination of this action; that the Court make such other interlocutory orders as may be just and proper; that the plaintiffs recover their costs and that they be decreed such other and further relief as to the Court may appear just and equitable.

A. A. HATCH,
Attorney for Plaintiffs.

Jess W. Watts,
Gidney & Gidney,
Turner & Turner,
Porter,
Wallace & Stephens,
W. T. Hunt, R. E. Hunt,
Of Counsel for Plaintiffs.

Exhibit A.

Department of the Interior.

Allottees — Certificate.

Commission of the Five Civilized Tribes.

Roll No. 5641 F. — Deceased No. 1102.

Muskogee, Ind. Ter., July 9th, 1906.

Nancy Colbert, Deceased.

Sub-division of	Section	Town.	Range
Lot 2 of	31	17	12
NE-4 of NE-4 of	31	17	12
NW-4 of NW-4 of SE-4 of NE-4 of	31	17	12
NW-4 of SW-4 of	17	18	12
E-2 of SE-4 of SE-4 of	29	18	12
NW-4 of SE-4 of SE-4 of	20	18	12
E-2 of SW-4 of SE-4 of SE-4 of	20	18	12
NW-4 of SW-4 of SE-4 of SE-4 of	20	18	12

Original delivered to — 473.39 A.

Exhibit B.

Department of the Interior.

Allottees — Certificate

Commission to the Five Civilized Tribes.

Roll No. 5640 F. — Deceased No. 1101.

Muskogee, Ind. Ter., July 9th, 1906.

Garfield Colbert, Deceased.

Sub-division of	Section	Town.	Range
NW-4 of NE-4 of	30	18	12
NE-4 of NE-4 of	30	18	12
SW-4 of NW-4 of	29	18	12
SW-4 of NE-4 of	29	18	12

Original delivered to — 160 A.

In the District Court of Creek County, State of Oklahoma.

No. 6332.

ISOM GRAYSON ET AL., Plaintiffs

vs.

JAMES A. HARRIS ET AL., Defendants.

Separate Answer of Defendants, William H. Harris, and James A. Harris.

And now come defendants, William H. Harris, and James A. Harris, and for their answer to plaintiffs' petition filed herein, deny each and every allegation therein contained and say the same are not true in manner and form as therein alleged and set forth.

And for their further answer to plaintiffs' said petition these defendants say that Nancy Colbert and Garfield Colbert were living on the first day of April, 1899, but died during the year 1900, without having been enrolled and without having received an allotment of land in the Creek Nation. That during the early part of the year 1906, under the authority contained in Section 28 of the Original Creek Agreement they were duly enrolled on the Freedmen Roll of the Creek Nation, and on July 9th, 1906, allotments of land were selected and set apart in their names. That said lands are the lands involved in this action and are substantially described by plaintiffs in said petition.

That at the time said allotments were selected and made as aforesaid an undivided half interest in both allotments descended to and became vested in Gertrude Grayson, who was then and there a citizen of the Creek Nation and a half sister of the said allottees, all being children of the same mother. That on July 9th, 1906, the said Gertrude Grayson became the owner of estate of inheritance therein and from that time until she died in April, 1907, she, the said Gertrude Grayson, was the owner thereof in fee simple.

That in the month of April, 1907, the said Gertrude Gray-

son died seized and possessed of said lands and property, which then and there descended to and became vested in Cloria Grayson, her grandmother, regardless of her citizenship.

And for their further answer to plaintiffs' petition these defendants deny that said Gertrude Grayson was an illigitimate child, but to the contrary, they aver that she was the legitimate offspring of Louisa Grayson and Armstead Foster, both citizens of the Creek Nation. That her said mother died in 1900, and her said father survived her and is still living.

That these defendants claim title to said land under and by virtue of the following conveyances, to wit:

One warranty deed dated January 2nd, 1908, made and executed by Micy Keys, nee Tobler, who is also known as Nicey Keys, and Jim Tobler to Cloria Grayson.

Also one General Warranty deed dated January 4th, 1908, made and executed by Cloria Grayson to L. A. Bell.

Also one General Warranty deed dated October 28th, 1908, made and executed by Armstrong Foster to L. A. Bell.

Also one General Warranty deed dated November 28th, 1908, made and executed by L. A. Bell and H. Anna Bell, his wife, to William H. Harris and James A. Harris, for an undivided one-half interest in and to said property.

Also one General Warranty deed dated November 19th, 1909, made and executed by Cloria Grayson to L. A. Bell, James A. Harris and William H. Harris.

Also one General Warranty deed dated June 30th, 1913, made and executed by L. A. Bell and H. Anna Bell, his wife, to William H. Harris and James A. Harris.

Also one tax deed dated May 31st, 1917, made and executed by J. E. Bruin, County Treasurer of Creek County, Oklahoma, to Ira J. Anderson.

Also one deed from said Ira J. Anderson dated 1917 to these defendants and others.

Whereby and by reason of said deeds of conveyances these defendants became, and are the owners in fee, of an undivided one-half interest in and to all the lands and property described by plaintiffs' in their said petition.

And for their further answer to plaintiffs' petition these defendants aver that they and those under whom they claim, and their co-tenants, have been in open, notorious, adverse, uninterrupted and exclusive possession of all of said lands, using and occupying same from the year 1906 until the present time, having excluded plaintiffs and all of them therefrom, and having denied them all right to said property or any part thereof for more than ten years next before the bringing of said action by plaintiffs, and therefore these defendants plead the statute of ten years limitation and the statute of seven year limitation, and the statute of five year limitation, and say that plaintiffs' cause of action, if any they ever had, has been and is forever barred.

And for their further answer to plaintiffs' petition these defendants deny that plaintiffs are citizens of the Creek Nation or descendants of citizens of the Creek Nation, and deny that they or any of their ancestors' names appear or can be found on the Rolls of the Creek Freedmen made by J. W. Dunn under authority of the United States, or that they or any of them, or their ancestors, were ever rightfully admitted to membership in the Creek Tribe; and defendants specially deny that any of the plaintiffs are in any manner whatever related to Gertrude Grayson, and therefore defendants charge that none of the plaintiffs have any lawful claim to or right in any of the property set up and described by them in their petition.

These defendants further show to the Court that plaintiffs' claims are unjust, illegal and unfounded, but that they constitute and are a slander and a cloud upon the title of these

defendants' property which have been and are being asserted wrongfully and unlawfully against them and which plaintiffs will continue to assert wrongfully and unlawfully against these defendants and their said property and thus continue to slander and cloud the title thereof unless enjoined by a decree of this court.

Wherefore, these defendants pray that plaintiffs take nothing by their suit and that judgment be entered herein quieting the title of said property in defendants, and that plaintiffs and all of them be enjoined from ever hereafter setting up any right, title or claim to said property or any part thereof, or from interfering with these defendants in the peaceable possession and enjoyment thereof. Defendants further pray for all costs and general relief.

ROBERT F. BLAIR,
GEORGE S. RAMSEY,

Attorneys for Defendants.

In the District Court of Creek County, State of Oklahoma.

No. 6332.

Isom Grayson et al., Plaintiffs

vs.

James A. Harris et al., Defendants.

Separate Answer of Quaker Oil and Gas Company.

Comes now the defendant, Quaker Oil & Gas Company, and adopts the answer of the defendants, William H. and James A. Harris, and joins in all the denials, allegations and pleas therein set forth, and further states that it claims a valid oil and gas mining lease on thirty-seven and one-half (37½) acres of the Nancy Colbert allotment described in the pleadings. Said thirty-seven and one-half (37½) acres being described as follows:

The East Half (E½) of the Southeast Quarter (SE¼); the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼); the North Half (N½) of the Southwest Quarter (SW¼) of the Southeast Quarter (SE¼) of the Southeast Quarter (SE¼); and the Southeast Quarter (SE¼) of the Southwest Quarter (SW¼) of the Southeast (SE¼) of the Southeast Quarter (SE¼) of Section Twenty (20), Township Eighteen (18) North, Range Twelve (12) East, containing 37.50 acres of land more or less, according to the Government survey.

And defendant claims that it has now and has at all times since it went into possession of said land, had the legal and equitable right, title and privilege to operate said land for oil and gas and extract the oil and gas therefrom, and denies that plaintiffs or either of them have any right, title or interest in said lands or any part thereof.

Having fully answered, defendant prays that plaintiffs take nothing.

G. EARL SCHAFFER,
GEORGE S. RAMSEY,
Counsel for Defendant.

Endorsements:

No. 6332. In District Court of Creek County, State of Oklahoma. Isom Grayson, et al., Plaintiffs, vs. James A. Harris, et al., Defendants. Separate Answer to Quarker Oil & Gas Company. Received and filed in District Court, Creek County, Oct. 18, 1917. Harrison Arnold, Court Clerk, Creek County, by H. H. Burns, Deputy.

In the District Court for Creek County, State of Oklahoma.

No. 6332.

ISOM GRAYSON ET AL., Plaintiffs

vs.

JAMES A. HARRIS ET AL., Defendants.

Reply.

Come now the plaintiffs in the above entitled action and for reply to the answer of the defendants, William H. Harris and James A. Harris, filed herein, deny each and every allegation of new matter therein contained, except such as are herein specifically admitted.

For further reply the plaintiffs state that neither Cloria Grayson nor Armstead Foster have and never had any right, title or interest in and to the lands in controversy herein, and that the deeds of conveyance by them made, described in defendants' answer and under which the defendants claim title to said land, are each and all of them void for that the said Cloria Grayson and Armstead Foster had no right, title or interest in said land and have never acquired any interest or title therein. That the deeds from L. A. Bell and H. Anna Bell, his wife, to the defendants, William H. Harris and James A. Harris, described in defendants' answer and under which they claim title through the said L. A. Bell are void for that the said L. A. Bell and H. Anna Bell had and never have had any right, title or interest in and to said land.

The plaintiffs further state that the deed described in defendants' answer as having been dated January 2nd, 1908, and made and executed by Micy Keys, nee Tobler, who is also known as Nicey Keys, and Jim Tobler to Cloria Grayson is not the deed of the said Micy Keys and Jim Tobler, nor either of them.

The plaintiffs further state that the tax deed mentioned in defendants' answer, made and executed by J. E. Bruin, County Treasurer of Creek County, Oklahoma, to Ira J. An-

derson is based upon a purported sale of the land described in said deed for taxes assessed and levied against said land for the year 1913. That the said tax deed is void for that it was made and issued without authority of law, without right and contrary to law, in this that the land described in said deed was not listed and assessed for taxation for the year 1913 as prescribed and directed by law and that said assessment was erroneous and illegal, and for that the County Treasurer failed and neglected to give notice as required by law for the amount of taxes assessed and levied against said land for the year 1913, and when the same became due and delinquent; and for that the taxes for the year 1913 levied and assessed against said land had not become delinquent at the time of the purported sale thereof for said taxes and that said land was not subject to sale for delinquent taxes at the time said sale was held and purported to be made, and that said sale was in all things illegal and void; and for that the sale of said land for taxes of 1913 was not made as required by law; and for that the return of said sale was not made to the County Clerk and that a record thereof was not kept as required by law.

The plaintiff further states that the deed described and mentioned in defendants' answer from Ira J. Anderson, dated 1917, to the defendants and others is void for that the said Ira J. Anderson had and never has had any right, title or interest in and to said lands.

The plaintiff hereby offer to pay to the defendants all taxes, penalties, interest and costs which they would be bound to pay if they were redeeming the land herein described from the purported tax sale, and hereby offer to pay to the defendants such other and further sum as the Court may find just and equitable to reimburse the defendants for all moneys paid out and expended by them for or on account of taxes, penalties, costs and interest thereon assessed and levied against said land.

Wherefore, in addition to the prayer of their petition,

the plaintiffs pray that the deeds described and mentioned in the answer of the defendants be declared void, that they be canceled, set aside and held for naught.

A. A. HATCH,
Attorney for Plaintiffs.

JESS W. WATTS, — PORTER,
GIDNEY & GIDNEY,
WALLACE & STEPHENS,
TURNER & TURNER,

Of Counsel for the Plaintiffs.

State of Oklahoma, Okmulgee County, ss.

Verification.

Elsie Edwards being first duly sworn, on oath, states that she is one of the plaintiffs in the above entitled cause; that she has heard read the above and foregoing reply and understands the same and believes the allegations therein made are true.

her
ELSIE X EDWARDS
mark

Witnesses to mark:

J. H. STEPHENS.
R. C. ROLAND.

Subscribed and sworn to before me this 14th day of May, 1919.

HARRISON ARNOLD, Court Clerk.
By J. A. FULP, Deputy.
(Seal of Clerk)

Endorsements on Reply:

No. 6332. Isom Grayson et al vs. James A. Harris et al.

REPLY. Received and filed in District Court, Creek County Jan 24 1918. H. Arnold, Court Clerk Creek County By H. H. B. Deputy. Leave to file out of time Jan 24, 1918. Ernest B. Hughes, Judge. A. A. Hatch, Atty. for Plaintiff, Tulsa, Okla.

In the District Court for Creek County, Oklahoma.

No. 6,332.

Isom Grayson et al., Plaintiffs.

vs.

James A. Harris et al., Defendants.

Reply.

Come now the plaintiffs in the above entitled case and for reply to the answer of the defendant, Quaker Oil and Gas Company, filed herein, deny each and every allegation of new matter therein contained, except such as are herein after specifically admitted.

For further reply the plaintiffs state that neither Cloria Grayson nor Armstead Foster have and never had any right title or interest in and to the lands in controversy herein, and that the deeds of conveyance by them made, described in the answer of William H. Harris and James A. Harris herein filed and adopted by the Quaker Oil and Gas Company, are each and all of them void for that the said Cloria Grayson and Armstead Foster had no right, title or interest in said lands and never acquired any interest or title therein.

The plaintiffs further state that the deeds from L. A. Bell and H. Anna Bell, his wife, to the defendants, William H. Harris and James A. Harris, described in their answer and under which the defendants claim title through the said L. A. Bell, are void for that the said L. A. Bell and H. Anna Bell had *a* and never have had any right title or interest in and to said land.

The plaintiffs further state that the deed described in the

answer of the defendants, William H. Harris and James A. Harris, filed herein, as having been dated January 2nd, 1908, and made and executed by Micy Keys nee Tobler, who is also known as Nicey Keys, and Jim Tobler to Cloria Grayson is not the deed of the said Micy Keys and Jim Tobler, nor either of them.

The plaintiffs further state that the tax deed mentioned in the answer of the defendants, William H. Harris and James A. Harris, herein filed, made and executed by J. E. Bruin, County Treasurer of Creek County, Oklahoma, to Ira J. Anderson, is based upon a purported sale of the land described in said deed for taxes assessed and levied against said land for the year 1913. That the said tax deed is void for that it was made and issued without authority of law, without right and *contrary* to law, in this that the land described in said deed was not listed and assessed for taxation for the year 1913, as prescribed and directed by law and that said assessment was erroneous and illegal, and for that the County Treasurer failed and neglected to give notice as required by law of the amount of taxes assessed and levied against said land for the year 1913, and when the same became due and delinquent; and for that the taxes for the year 1913 levied and assessed against said land had not become delinquent at the time of the purported sale thereof for said taxes and that said land was not subject to sale for delinquent taxes at the time said sale was held and purported to be made, and that said sale was in all things illegal and void; and for that the sale of said land for taxes of 1913 was not made as required by law; and for that the return of said sale was not made to the County Clerk and that a record thereof was not kept as required by law.

The plaintiff further states that the deed mentioned in the said answer of William H. Harris and James A. Harris, from Ira Anderson to the defendants, William H. Harris and James A. Harris and others, is void for that the said Ira J. Anderson had and never has had any right, title or interest in and to said lands.

The plaintiffs further state that the oil and gas mining lease mentioned in the answer of this defendant and under which it claims possession, *rirgt* and title in said land was not made or executed by these plaintiffs or any of them, and is not the deed and conveyance or contract of these plaintiffs or any of them, but as to these plaintiffs is void.

Wherefore, in addition to the relief prayed for in their petition, the plaintiffs pray that the deeds mentioned in the answer of William H. Harris and James A. Harris and the oil and gas mining lease mentioned in the answer of the Quaker Oil and Gas Company be each and all of them declared void, be *cancled*, set *asid* and held for naught.

A. A. HATCH,
Attorney for Plaintiffs.

Jess W. Watts,
Gidney & Gidney,
Turner & Turner,
Porter,
Wallace & Stephens,
Of Counsel for Plaintiffs.

State of Oklahoma, County of Wagoner, ss.
In the District Court

No. ——.

Isom Grayson et al., Plaintiffs,
vs.
James A. Harris et al., Defendants.

Intervention Nellie Harris.

Comes now Nellie Harris and by leave of Court first had and obtained files this her plea of intervention in this cause. Plaintiff adopts all parts of petition and amended petition heretofore filed in this cause in so far as same does not conflict with the interest of this petitioner.

This plaintiff further states that George Tobler, referred to in this cause, died about the year 1890, leaving surviving him his daughter, Louisa Colbert, a citizen of the Creek Nation, and his wife, Clora Grayson, a non-citizen of the Creek Nation, and no other descendants, not mother of father; that the said George obler had the following *brothers* and sisters, namely: Micy Keys, Bucher Grayson, Friday Tobler, Easy Rowe, Phoeba Stephens, Mimmie Grayson, Hannah Grayson, Sampson Stidham, Jim Boy Tobler, Dinah Grayson and Jack Tober, all of whom are Creek citizens and members of the Creek Tribe of Indians, and all of whom are now dead except Micy Keys; that all of said deceased brothers and sisters of said George Tobler left surviving them Creek descendants, who are heretofore named in plaintiffs' original petition and amended petition and are all related to them and to the said George Tobler, as therein set forth; that your petitioner is the widow of the said Jim Boy Tobler, referred to in this cause as one of the brothers of George Tobler; that at the time of the death of the said Jim Boy Tobler be owned and possessed a 1/11th interest in the lands involved in this cause by reason of his relationship to all the parties herein referred to, and that at his death a 1/22nd interest in the land involved herein passed to your petitioner as his widow.

Wherefore, premises considered, plaintiff prays judgment against the defendants for restitution and possession of their undivided portion and interest in said lands, as set forth and alleged herein. Plaintiff further prays for an order of this court requiring the defendants to answer and set forth their nature and extent of their respective titles and interest in the land herein described; that this plaintiff, together with the other plaintiffs, be adjudged and decreed to be the owners in fee each of the undivided interest of which they allege to be the respective owners as set forth in original and amended petitions filed herein; that they and each of them have judgment against the defendants confirming their title and interest in said lands and that partition of said land be made according to the respective rights of the parties inter-

ested therein, and that if same cannot be equitably divided that the lands be sold and the proceeds thereof be diveded between the parties interested therein according to their respective rights and interests.

The plaintiff further prays that the defendants, James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil and Gas Company, James Brann and Dixon Q. Brown, be required to answer and set forth the quantity and value of oil and gas they have taken from said lands, either jointly or individually, and to render an account thereof, and that the plaintiff have judgment against the said named defendants for the value of such portion of the oil and gas as she is entitled, and that the said judgment be made a lien against the respective interests of the said named defendants in and to said lands.

The plaintiff further prays that a receiver be immediately appointed by a proper order of this court in this case to take possession of said lands and the oil and gas wells thereon and conserve the oil and gas contained in and produced therefrom, and impound the same or the proceeds thereof, pending the final determination of this action, for the use and benefit of this plaintiff and such of the defendants as may be found to have an interest therein; and that the defendants and each of them, their agents, employees and all persons claiming by, through or under them, or any of them, be enjoined and barred from operating said properties for oil or gas, or taking oil and gas therefrom or selling or otherwise disposing thereof, or in any manner interfering with the Court's receiver in operating said properties pending the determination of this action; that the court make such other interlocutory orders as may be just and proper; that the plaintiff recover her costs herein and that she be decreed such other and further relief as to the court may appear just and proper.

WATT & SUMMERS,
Attorney for Plaintiff.

(Endorsements.)

No. 6332. In the District Court. Isom Grayson et al., Plaintiffs, vs. James A. Harris et al., Defendants. Petition of Nellie Harris. Attys. Lien Claimed for 50% of Recovery, by Watte & Summers, Wagoner, Okla. Received and filed in District Court, Creek County, June 9, 1919. Harrison Arnold, Court Clerk, Creek County. By J. A. Fulp, Deputy.

State of Oklahoma, County of Wagoner, ss.

In the District Court.

No. 6332.

ISOM GRAYSON ET AL., Plaintiffs

vs.

JAMES A. HARRIS ET AL., Defendants.

Petition.

Come now Elizabeth Randal, Rachal Edwards and John Island, parties plaintiff herein, and by leave of court first had and obtained file this their plea of intervention in this cause. Plaintiff adopt all parts of petition and amended petition of plaintiffs heretofore filed in this cause in so far as same does not conflict with the interest of these petitioners.

These plaintiffs further state that George Tobler, referred to in this case, died about the year 1890, leaving surviving him his daughter, Louisa Colbert, a citizen of the Creek Nation, and his wife, Clora Grayson, aa non-citizen of the Creek Nation, and no other descendants, nor mother nor father; that the said George Tobler had the following brothers and sisters, namely: Micy Keys, Bucher Grayson, Friday Tobler, Easy Rowe, Phoeba Stephens, Mimmie Grayson, Hannah Grayson, Sampson Stidham, Jim Boy Tobler, Dinah Grayson, and Jack Tobler, all of whom are Creek citizens and members of the Creek Tribe of Indians, and all of whom are now dead except Micy Keys; that all of said deceased brothers and sisters of said George Tobler left surviving them

Creek descendants, who are heretofore named in plaintiffs' original petition and plaintiffs' amended petition and are all related to them and to the said George Tobler, as therein set forth; that the said Jack Tobler is not mentioned in plaintiffs' petition or amended petition heretofore filed in this cause; that at the death of said Jack Tobler he left surviving him the following named persons as his heirs and to whom his estate passed under the laws then in force: Elizabeth Randal, who is the daughter and only living child of Jack Tobler, Rachal Edwards, plaintiff herein, who was a daughter of Jerry Tobler, who was a son of Jack Tobler, deceased, and entitled to participate in his estate; and John Island, who was the son of Cora Island, who was a daughter of Jerry Tobler, a son of Jack Tobler; that the said John Island is the only person entitled to participate in the estate of Cora Island, deceased, as an heir to the estate of Jack Tobler; that by reason of all of which these petitioners claim to own a 1/11th interest in the lands involved in this cause by reason of their relationship, as herein set forth.

Wherefore, premises considered, plaintiffs pray judgment against the defendants for restitution and possession of their undivided portion and interest in said lands, as set forth and alleged herein. Plaintiffs further pray for an order of this court requiring the defendants to answer and set forth their nature and extent of their respective titles and interests in the land herein described; that these plaintiffs, together with the other plaintiffs, be adjudged and decreed to be the owners in fee each of the undivided interest of which they alleged to be the respective owners as set forth in original and amended petitions filed herein; that they and each of them have judgment against the defendants confirming their title and interest in said lands and that partition of said land be made according to the respective rights of the parties interested therein, and that if the same cannot be equitably divided that the lands be sold and the proceeds thereof be divided between the parties interested therein according to their respective rights and interests

The plaintiffs further pray that the defendants, James A. Harris, William H. Harris, James H. Kennedy, Quaker Oil and Gas Company, James Brann and Dixon Q. Brown, be required to answer and set forth the quantity and value of the oil and gas they have taken from said lands, either jointly or individually, and to render an account thereof, and that the plaintiffs have judgment against the said named defendants for the value of such portion of the oil and gas as they are entitled, and that the said judgment be made a lien against the respective interests of the said named defendants in and to said lands.

The plaintiffs further pray that a receiver be immediately appointed by a proper order of this court in this case to take possession of said lands and the oil and gas wells thereon and conserve the oil and gas contained in and produced therefrom, and impound the same or the proceeds thereof, pending the final determination of this action, for the use and benefit of these plaintiffs and such of the defendants as may be found to have an interest therein; and that the defendants and each of them, their agents, employees and all persons claiming by, through or under them, or any of them, be enjoined and barred from operating said properties for oil or gas, or taking oil and gas therefrom or selling or otherwise disposing thereof, or in any manner interfering with the Court's receiver in operating said properties pending the determination of this action; that the Court make such other interlocutory orders as may be just and proper; that the plaintiffs recover their costs herein and that they be decreed such other and further relief as to the Court may appear just and proper.

WATT & SUMMERS,
Attorneys for Plaintiffs.

(Endorsements.)

No. 6332. In the District Court. Isom Grayson et al., Plaintiff, vs. James A. Harris et al., Defendant. Petition. Attys.

Lien Claimed for 50% of Recovery by Watt & Summers, Wagoner, Okla. Received and filed in District Court, Creek County, Jun 9 1919. Harrison Arnold, Court Clerk, Creek County, by J. A. Fulp, Deputy.

State of Oklahoma, County of Wagoner, ss. In the District Court.

No. ——

Isom Grayson et al., Plaintiffs,
vs.
James A. Harris et al., Defendants.

Order.

Now, on this the 9th day of June, 1919, the petition of Elizabeth Randal, Rachal Edwards, John Island and Nellie Harris to be made party plaintiffs herein, and the defendants have offered no objections.

It is, therefore, ordered that the said Elizabeth Randal, Rachal Edwards, John Island and Nellie Harris be made party plaintiffs herein, and that they be authorized to file such pleadings setting up their interest in the land involved in this controversy as claimed by them.

LUCIEN B. WRIGHT,
District Judge.

(Endorsements.)

No. 6,332. In the District Court. Isom Grayson et al., Plaintiffs, vs. James A. Harris et al., Defendants. Order making Elizabeth Randal, Rachal Edwards, John Island and Nellie Harris parties plaintiff. Received and filed in District Court, Creek County, Jun 13 1919. Harrison Arnold, Court Clerk, Creek County. By J. A. Fulp, Deputy.

State of Oklahoma, County of Wagoner, ss. In the District Court.

No. ——

Isom Grayson et al., Plaintiffs.

vs.

James A. Harris et al., Defendants.

Reply.

Comes now, Nellie Harris, one of the plaintiffs in the above entitled cause, and for reply to the answer of William H. Harris and James A. Harris heretofore filed in this cause, and says and states:

That she denies each and every paragraph of said answer, except such matters as are herein specifically admitted. The plaintiff denies that at the death of Gertrude Grayson that the land herein involved then and there descended to and became vested in Clora Grayson, her grandmother, or that by reason of any deed made by her she conveyed to the defendants or any one else any interest in said lands.

Plaintiff denies, second, that Gertrude Grayson was the legitimate off-spring of Louisa Grayson and Armstead Foster, or that Armstead Foster is a citizen of the Creek Nation.

Plaintiff, for further reply, says and states, that the purported deed, dated January 2, 1908, which is claimed to have been executed by Micy Keys, nee Tobler, and Jim Tobler to Clora Grayson, is not the deed of Micy Keys and Jim Tobler, but is a forgery; that the purported warranty deed, dated January 4, 1908, made and executed by Clora Grayson to L. A. Bell conveyed no title to the said L. A. Bell; that the purported deed, dated October 28, 1908, made and executed by Armstead Foster to L. A. Bell conveyed no title to the said L. A. Bell; that the purported warranty deed, dated November 28, 1908, made and executed by L. A. Bell and H. Anna Bell, his wife, to William H. Harris and James A. Harris for an undivided one-half interest in said land, con-

veyed no title to the said William H. Harris and James A. Harris; that the purported warranty deed, dated November 19, 1909, made and executed by Clora Grayson to L. A. Bell, James A. Harris and William H. Harris, conveyed no title to said L. A. Bell, James A. Harris and William H. Harris; that the purported warranty deed, dated June 30, 1913, made and executed by L. A Bell and H. Anna Bell to William H. Harris and James A. Harris, conveyed no title to said William H. Harris and James A. Harris; that the purported tax deed, dated May 31, 1917, made and executed by J. E. Bruin, County Treasurer of Creek County, Oklahoma, to Ira J. Anderson, conveyed no title to said Ira J. Anderson; that the purported deed from Ira J. Anderson, dated, 1917, to defendants, conveyed no title to them.

Plaintiff, for further reply, denies that by reason of said deeds, aforesaid, the defendants became or that they are now the owners in fee of an undivided one-half interest in and to the lands and property described in plaintiff's petition.

Plaintiff, for further reply, denies that the defendants and those under whom they claim have been in open, notorious, adverse, uninterrupted and exclusive possession of said lands, or any part thereof for more than ten years before the bringing of this suit by plaintiff. Plaintiff denies that the statute of ten years' limitation, and the statute of seven years' limitation and the statute of five years' limitation have run as against plaintiff, or that plaintiff's cause of action is barred.

Wherefore, plaintiff prays for judgment herein as claimed in plaintiff's petition.

WATTS & SUMMERS,
Attorneys for Plaintiff.

State of Oklahoma, County of Okfuskee, ss.

Nellie Harris, of lawful age, being first duly sworn, says

that she is the plaintiff above named; that she has read the above and foregoing petition and knows the contents thereof, and that the facts therein set forth are true.

her
NELLIE HARRIS X.
mark

Witnesses to mark:
I. H. Cunningham.
S. A. Duling.

Subscribed and sworn to before me by Nellie Harris this the 16th day of June, 1919.
(Seal)

S. A. DULING,
Notary Public.

My commission expires Oct. 30, 1921.

(Endorsements.)

No. 6,332. In the District Court. Isom Grayson et al., Plaintiffs, vs. James A. Harris et al., Defendants. Reply of Nellie Harris. Received and filed in District Court, Creek County, Jun 18 1919. Harrison Arnold, Court Clerk, Creek County. By J. A. Fulp, Deputy.

In the District Court of Creek County, State of Oklahoma.

No. 6,332.

Isom Grayson et al., Plaintiffs.
vs.
James A. Harris et al., Defendants.

Answer of Defendant Harris to the Intervention of Nellie Harris, Elizabeth Randal, Rachel Edwards and John Island.

And now come James A. Harris and William H. Harris and plead against these parties all the title they have heretofore set up against plaintiffs and defendant, Jim Colbert.

And they further plead against these parties all the matters and things heretofore pleaded by them against their other adversaries herein, including the statutes of seven years' limitation, and five years' limitation.

And for their further answer herein these defendants deny each and every allegation contained in their said petitions of intervention hereis, and say the same are not true.

GEO. S. RAMSEY & ROBERT F. BLAIR,
Attorneys for Said Defendant.

(Endorsements.)

No. 6,332. Isom Grayson et al., vs. James A. Harris et al. Received and filed in District Ciurt, Creek County, Jul 1-1919. Harrison Arnold, Court Clerk, Creek County. By J. A. Fulp, Deputy.

In the District Court of Creek County, State of Oklahoma.
No. 6,332.

Isom Grayson et al., Plaintiffs,
vs.
James A. Harris et al., Defendants.

Amendment to Defendants Harris' Answer.

And now come defendants, James A. Harris and William H. Harris, and by permission of the court first had, file this their amendment to their answer, and say that if plaintiffs have stated any cause of action or proved any right of recovery, which is not admitted, but denied, then the same has been and is barred by the statutes of three years' limitation and the statute of two years' limitation.

Wherefore, defendants pray that plaintiffs take nothing by their suit.

GEO. S. RAMSEY,
ROBERT F. BLAIR,
Attorneys for Said Defendants.

(Endorsements.)

No. 6,332. Isom Grayson et al., vs. James A. Harris et al. Amendment to answer of Harris. Filed May 18 1920 in open court. Harrison Arnold, Court Clerk.

In the District Court of Creek County, State of Oklahoma.
No. 6,332.

Isom Grayson et al., Plaintiffs,
vs.
James A. Harris et al., Defendants.

Journal Entry.

And now on this 21st day of February, 1920, the same being one of the regular days of the ------ term of this court, came on for final hearing the above entitled cause, and all parties being present and represented in court by counsel, the court makes and announces findings of facts and conclusions of law and finds the issues in favor of plaintiffs and intervenors, except the heirs of Jim Boy Tobler and Micey Keys, and against defendants, to each and every and all of which defendants now in open court object, and the court overrules their objections to which defendants except and still except.

Thereupon, defendants file their motion for a new trial, which is heard by the court and overruled and denied to which defendants except, and judgment entered accordingly to which all defendants except. And now and at the time judgment is rendered by the court, in the presence of all the parties to this action, the trial judge, court clerk, and the sheriff, in open court, defendants give notice of their intention to appeal to the Supreme Court of the State of Oklahoma, which notice of their intention to appeal is now ordered entered and is entered by the court clerk in the trial docket of this court.

And the court fixes the amount of the appeal bond at

$15,000 to be given by *defednats* within thirty days from this date, and to be approved by the court clerk, and execution is ordered stayed during that time and thereafter according to law in such cases made and provided.

And for good cause shown to the court it is further ordered by the court that the time for making and serving a case-made is hereby extended for three months up to and including May 21st, 1920, and ten days is allowed thereafter for suggesting amendments, the same to be settled, signed and certified by the trial judge upon three days' notice.

LUCIEN B. WRIGHT, Judge.

(Endorsements.)

No. 6332. Isom Grayson et al. vs. James A. Harris et al. Journal Entry. Order Overruling Motion for New Trial and Allowing Appeal. Received and filed in District Court Creek County, Feb. 28 1920. Harrison Arnold, Court Clerk, Creek County. By J. A. Fulp, Deputy.

In the District Court of Creek County, State of Oklahoma.
No. 6332.

ISOM GRAYSON ET AL., Plaintiffs,
vs.
JAMES A. HARRIS ET AL., Defendants.

Journal Entry.

Findings of Facts, Conclusions of Law and Decree.

Now, on this 9th day of June, 1919, it being one of the days of the regular March, 1919, term of this, the District Court for Creek County, Oklahoma, this the above entitled case came on for trial, the plaintiffs appearing by their attorneys, A. A. Hatch, Jesse W. Watts, W. T. Hunt, Turner & Turner, J. T. Smith, Wallace & Stephens and John E. Williams; the defendant, James A. Harris, appearing in person

and by his attorney, Robt. E. Blair, the defendants, William H. Harris and James H. Kennedy, appearing by their attorney, Robt. F. Blair, the Ohio Cities Gas Company having been substituted as a defendant for the Quaker Oil & Gas Company, appearing by its attorney, G. Earl Schaffer, the defendant, James Brenn, appearing by his attorneys, West, Sherman, Davidson & Moore, and the defendant Jim Colbert, appearing in person, and by his attorney, R. E. Jackson, and judgment having been given and rendered against the defendant, Jim Colbert on the pleadings and a jury being waived the case is tried to the Court.

And now, on the 10th day of June, 1919, the cause is continued by agreement of parties to the 8th day of July, 1919, for further hearing, and now on the 8th day of July, 1919, this cause comes on for further hearing, and the Court having heard the evidence and argument of counsel, the court takes the case under advisement, and now on the 21st day of February, 1920, the Court having been fully advised finds from the evidence and agreed statement of counsel the facts as follows:

Findings of Facts.

First. That James Brann is the owner of an undivided one-half of the Southwest Quarter of the Northeast Quarter, and the Southwest Quarter of the Northwest of Section Twenty-nine, and the North Half of the Northeast Quarter of Section Thirty, all in Township Eighteen North, Range Twelve East,

that his title thereto is through *mesne* conveyances from Jim Colbert, the father of Garfield Colbert.

Second. That all of the plaintiffs named in the petition herein filed, except Rose Manuel, Willie Brown and Robert Brown, are Creek Citizens. That the interveners are Creek Citizens.

Third. That Nancy Colbert, deceased, Louiza Colbert, deceased, Garfield Colbert, deceased, and Gertrude Grayson,

deceased, were all Creek Citizens and enrolled as such on the Approved and Final Roll of Creek Freedman, and that Jim Colbert is a Creek Citizen and duly enrolled upon said roll.

Fourth. That the said Nancy Colbert died, intestate, without issue and never having been married, about the first day of March, 1900, leaving surviving her the said Jim Colbert, her father, and the said Louiza Colbert, since deceased, her mother.

Fifth. That the said Louiza Colbert died, intestate, about March 7th, 1900, leaving her surviving Jim Colbert, her husband, and Garfield Colbert, since deceased, her son, and the said Gertrude Grayson, since deceased, her daughter, and no other descendants.

Sixth. That the said Garfield Colbert died, intestate, without issue and never having been married, in the month of June, 1900, leaving him surviving Jim Colbert, his father and the said Gertrude Grayson, since deceased, his half sister, and no other brothers or sisters, or children of deceased brothers or sisters.

Seventh: That on the 9th day of July, 1906, there was allotted in the name of Nancy Colbert to her Creek heirs the following described lands of Creek Nation, to wit:

> Lot Two and the Northeast Quarter of the Northeast Quarter and the Northwest Quarter of the Northwest Quarter of the Southeast Quarter of the Northeast Quarter of Section 31, in Township 17 North of Range 12 East, and the Northwest Quarter of the Southwest Quarter of Section 17, and the East Half of the Southeast Quarter of the Southeast Quarter and the Northwest Quarter of the Southeast Quarter of the Southeast Quarter and the East Half of the Southwest Quarter of the Southeast Quarter of the Southeast Quarter and the Northwest Quarter of the Southwest Quarter of the Southeast Quarter of the Southeast Quarter of Section

20, all in Township 18 North of Range 12 East, and all in Creek County, Oklahoma.

Eighth. That on the 9th day of July, 1906, there was allotted in the name of Garfield Colbert to his heirs the following described lands of the Creek Nation, to wit:

The Southwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northwest Quarter to Section 29, and the North Half of the Northeast Quarter of Section 30, all in Township 18 North of Range 12 East, in Creek County, Oklahoma.

Ninth. That the said Jim Colbert, and Gertrude Grayson were both living on the 9th day of July, 1906, the date of the selection of the allotment aforesaid.

Tenth. That the said Gertrude Grayson, deceased, was the illegitimate daughter of the said Louiza Colbert, deceased, that her putative father was John Foster, a non citizen of the Creek Nation, and not a Creek Citizen.

Eleventh. That the said Gertrude Grayson died, intestate, without issue and never having been married, in the month of April, 1907, possessed in fee of an undivided one-half of the lands above described and leaving her surviving Cloria Grayson, known as Cloria Ross, her grandmother, and also Micy Keys her great aunt, Jim Boy Tobler, her great uncle, and the descendants of Bucher Grayson, deceased, Sampson Stidham, deceased; Friday Tobler, deceased, and Jack Tobler, deceased, her great uncles, and also the descendants of Dinah Grayson, deceased, Easy Rowe, deceased, and Minnie Grayson, deceased, her great aunts, which descendants names and kinship appear in the petition herein.

Twelfth. That George Tobler, deceased, was a Creek Freedman, and was the father of the said Louiza Colbert.

Thirteenth. That Gloria Grayson, known also as Gloria Ross, is the mother of the said Louiza Colbert, and that the

said Gloria Grayson is still living and that she is a non citizen of the Creek Nation and not a Creek descendant.

Fourteenth. That the said George Tobler, the father of Louiza Colbert, was the son of Jim Tobler, known also as Tobler Stidham, that they both died many years ago.

Fifteenth. That Butcher Grayson, Sampson Stidham, Friday Tobler, Jim Boy Tobler, and Jack Tobler, were sons of the said Jim Tobler, deceased; and brothers of the said Geo. Tobler; that Dinah Grayson, Hannah Grayson, Phoebe Stephens, Easy Rowe, Minnie Grayson and Micy Keys, were the daughters of the said Jim Tobler, and sisters of the said Geo. Tobler, and that they were all Creek Freedmen.

Sixteenth. That the brothers and sisters aforesaid of the said George Tober are dead except Micy Keys.

Seventeenth. That the plaintiffs in this case are the descendants of the deceased brothers and sisters aforesaid of the said George Tobler and are related to the said Gertrude Grayson and to each other as set forth in their petition herein filed.

Eighteenth. That on January 2, 1908, prior to the death of Jim Boy Tolbert, and prior to the institution of this suit the said Jim Boy Tobler and Micy Keys sold and conveyed all of their rights, titles and interests in and to the land above described to Cloria Grayson, known also as Cloria Ross; that afterwards on January 4th, 1908, the said Cloria Grayson sold and conveyed said interests to L. A. Bell and thereafter on the 28th day of November, 1908, the said L. A. Bell, joined his wife sold and conveyed said interests to William H. Harris and James A. Harris, defendants herein.

Nineteenth. That the defendants, William Harris and James A. Harris, nor those under whom they claim, took any possession whatever of said land until sometime in 1912, after the decision of the Federal Court in the case of Brann vs. Bell, in which it was decreed that one-half of the lands vested

in the paternal line, and the other half in the maternal line of the allottee; that the evidence fails to show an open, adverse, continuous and hostile possession in the defendants, James A. Harris, William H. Harris, James H. Kennedy, the Quaker Oil & Gas Company, and the Ohio Cities Oil & Gas Company, or any of them, or their predecessors, in the title, prior to November 17, 1907.

Twentieth. That the defendants James A. Harris and William H. Harris are in possession of the undivided one-half of all of said lands, claiming to be the owners in fee thereof, and denying all right of the plaintiffs and intervenors, therein, and keep them out of possession thereof.

Twenty-first. That the Ohio Cities Gas Company is in possession of and is producing oil and gas from a portion of said land, to wit:

> East Half of Southeast Quarter of Southeast Quarter; Northwest Quarter of Southeast Quarter of Southeast Quarter; East Half of Southwest Quarter of Southeast Quarter of the Southeast Quarter; Northwest Quarter of Southwest Quarter of Southeast Quarter of the Southeast Quarter of Section 20, Township 18, Range 12, containing 37½ acres more or less.

That the said Ohio Cities Gas Company deny any and all rights of the plaintiffs and intervenors in said land and the oil and gas produced therefrom and keep the plaintiffs and intervenors out of possession thereof.

Twenty-second. That the defendants, James A. Harris and William H. Harris claim and derive whatever title they have by means conveyances from Cloria Grayson, as the maternal grandmother of Gertrude Grayson, and as the grantee of Micey Keys and Jim Boy Tobler.

Conclusions of Law.

From the foregoing facts the court concludes as matters of law:

First. That Cloria Grayson, also known as Cloria Ross, being a non-citizen of the Creek Nation and not a Creek descendant, took no right, title or interest in the lands in controversy as the heir of Gertrude Grayson, and she has never had any interest in said land other than the interest conveyed to her by Micy Keys and Jim Boy Tobler.

Second. That upon the allotment of said lands, on July 9, 1906, the title thereto passed to the then living Creek heirs of Nancy Colbert and Garfield Colbert as provided by Chapter 49 of Mansfield Digest of the Statutes of Arkansas; that said heirs were Jim Colbert and Gertrude Grayson, being such heirs they each took an undivided one-half interest in said lands upon the allotment thereof.

Third. That upon the death of Gertrude Grayson in April, 1907, her undivided one-half interest in said lands descended to her surviving kindred, who were Creek Citizens or Creek descendants, in accordance with the laws of Descent and Distribution as provided in Chapter 49 of Mansfield's Digest of the Laws of Arkansas, as modified by the provisos of Section 6 of the supplemental Creek Agreement, limiting the descent to Creek Citizens and Creek descendants. And that the Creek heirs of Gertrude Grayson surviving her and their kinship and the proportional share of each, as such heirs, in the undivided one-half of the lands in question herein, are as follows, and are as agreed among the plaintiffs: Micey Keys, who is a sister of the said George Tobler, deceased, who was the father of the said Louiza Colbert, deceased, who was the mother of the said Gertrude Grayson, deceased, a 1/11 part.

Jim Boy Tobler, who was a brother of the said George Tobler, who was the father of the said Louiza Colbert, deceased, who was the mother of said Gertrude Grayson, deceased, a 1/11 part.

(Descendants of Bucher Grayson.)

Isom Grayson, who was a son of Bucher Grayson, de-

ceased, who was a brother of the said George Tobler, deceased, a 1/33 part.

The following named children of Ceasar Grayson, deceased, who was a son of the said Bucher Grayson, deceased, to wit:

Pauline Carolina, a 1/264 part; Alice Carolina, a 1/264 part; Bertha Grayson, a 1/264 part; Gertie Carolina, a 1/264 part; Polly Grayson, a 1/264 part; Lucy Williams, a 1/264 part; Dock Grayson, a 1/264 part.

The only son of Zack Grayson, deceased, who was a son of the said Caesar Grayson, deceased, to wit: Zack Grayson, 1/264 part.

The following named children of Louisa Haynes, deceased, who was a daughter of the said Bucher Grayson, deceased, to wit:

Delilah Hutton, a 1/297 part; Sam Haynes, a 1/297 part; Alice Hunter, a 1/297 part; Rose Haynes, a 1/297 part; Rayford Hutton, a 1/297 part.

Jack Stidham, husband of Louisa Haynes, 1/99 part.

The following named children of Adaline Stedham, deceased, who was a daughter of the said Louisa Haynes, deceased, to wit: Sam Stidham, a 1/594 part; Letha Stidham, a 1/594 part.

(Descendants of Sampson Stidham.)

The children of Lucy Lester, deceased, who was a daughter of Sampson Stidham, deceased, who was a brother of the said George Tobler, deceased, to wit:

Hattie Givens, a 1/99 part; George Harrison, a 1/99 part.

The following named children of Lizzie Boyce, deceased, who was a daughter of the said Lucy Lester, deceased, to wit: Jennie Boyce, a 1/495 part; Clarence Boyce, a 1/495 part;

Lucy Boyce, a 1/495 part; Hattie Boyce, a 1/495 part; Beatrice Boyce, a 1/495 part.

The following named children of Tamie McIntosh, deceased, who was a daughter of the said Sampson Stidham, deceased, to wit: Joe McIntosh, a 1/231 part; Wiley McIntosh, a 1/231 part; John McIntosh, a 1/231 part; George McIntosh, 1/231 part; Rebecca McIntosh, a 1/231 part; Elzora Fields, a 1/231 part.

The following named children of Elsie McIntosh, deceased, who was a daughter of the said Tamie McIntosh, deceased, to wit: Mamie Davis, nee Nevins, a 1/1155 part; Willie Smith, a 1/1155 part; Johanna Smith, a 1/1155 part; Henry Smith, a 1/1155 part; George Smith, a 1/1155 part.

A son of Lizzie Fisher, deceased, who was a daughter of the said Sampson Stidham, deceased, to wit: Prince Lewis, a 1/132 part.

A son of Harkness Lewis, deceased, who was a son of the said Lizzie Fisher, deceased, to wit: Elmore Lewis, a 1/660 part; Sarah Lewis McSwain, a 1/660 part; Lennie Lewis, a 1/660 part; Jessie Lewis, a 1/660 part; Robert Lewis, a 1/660 part.

The following named children of Katie McIntosh, deceased, who was a daughter of the said Lizzie Fisher, deceased, to wit: Mary Manuel, a 1/396 part; Roy McIntosh, a 1/396 part; Roy McIntosh, a 1/396 part; Roxyana McIntosh, a 1/396 part.

(Descendants of Friday Tobler.)

The following named children of Dave Friday, deceased, who was a son of Friday Tobler, deceased, who was a brother of the said George Tobler, deceased, to wit:

Berry Friday a 1/110 part; Louis Friday a 1/110 part; Jack Friday, a 1/110 part; Bennie Friday, a 1/110 part; Billy Friday, a 1/110 part; Katie Harrison, a 1/110 part; Julia Durant, a 1/110 part; Edward Friday, a 1/110 part.

The following named children of Rebecca Watley, deceased, who was a daughter of the said Dave Friday, deceased, to wit: Beacher Watley, a 1/660 part; Jack Watley, a 1/660 part; Beatrice Watley, 1/660 part; Myrtle Watley, a 1/660 part; Tim Watley (husband of Rebecca Watley), a 1/336 part.

The daughter of Anna Vans, deceased, who was a daughter of the said Dave Friday, deceased, to wit: Dorothy Grayson, a 1/110 part.

(Descendants of Dinah Grayson.)

The following named children of Tommy Grayson, deceased, who was a son of Dinah Grayson, deceased, who was a sister of the said George Tobler, deceased, to wit: Bill Grayson, a 1/66 part; Lona Grayson, a 1/66 part; Katie Grayson, 1/66 part; Lucy Grayson, a 1/66 part; Janey Grayson, a 1/66 part; Cooper Grayson, a 1/66 part.

(Descendants of Hannah Grayson.)

A son of Hannah Grayson, deceased, who was a sister of the said George Tobler, deceased, to wit: Dick Thursday, a 1/44 part.

The following named children of Leah Hawkins, deceased, who was a daughter of the said Hannah Grayson, deceased, to wit: Peter Hawkins, a 1/352 part; Joe Hawkins, a 1/352 part; Sambo Hawkins, a 1/352 part; Dave Hawkins, a 1/352 part; Robert Hawkins, a 1/352 part; Mack Hawkins, a 1/352 part.

The following named children of Hagar White, deceased, who was the daughter of the said Leah Hawkins, deceased, to wit: Tommy White, a 1/1056 part; Rachie White, a 1/1056 part; Jessie Casey, a 1/1056 part.

The daughter of Willie Hawkins, deceased, who was a son of the said Leah Hawkins, deceased, to wit: Gaula Hawkins, a 1/352 part.

The daughter of Sibbie Ross, deceased, who was a daughter of the said Hannah Grayson, deceased, to wit: Patsy Harrison, a 1/44 part.

The following named children of Katie Corbray, deceased, who was the daughter of the said Hannah Grayson, deceased, to wit: Rose Corbray, a 1/132 part; Mary Corbray, a 1/132 part.

The following named children of Hannah Perry, deceased, who was a daughter of the said Katie Corbray, deceased, to wit: Nettie Perry, a 1/528 part; Esther Lee Perry, a 1/528 part; Willie May Perry and Lucile Perry, a 1/528 part (each).

(Descendants of Phoebe Stephens.)

The following named children of Phoebe Stephens, deceased, who was a sister of the said George Tobler, deceased, to wit: Joe Stephens, a 1/44 part; Morris Stephens, a 1/44 part.

The following named children of Sonny Grayson, deceased, who was the son of Phoebe Stephens, deceased, to wit: Joe Grayson, a 1/220 part; Leah Cully, a 1/220 part; Phoebe White, a 1/220 part; Micey Goff, a 1/220 part.

A daughter of Emma Rowe, deceased, who was a daughter of the said Sonny Grayson, deceased, to wit: Esther Rowe, a 1/220 part.

A son of Leah Jamison, deceased, who was a daughter of the said Phoebe Stephens, deceased, to wit: Monday Jamison, a 1/88 part.

The following named children of Henry Murrell, deceased, who was the son of Leah Jamison, deceased, to wit: Jeff Murrell, a 1/264 part; Percilla Murrell, a 1/264 part; Lou Daisy Murrell, a 1/264 part.

(Descendants of Easy Rowe.)

The following named children of Easy Rowe, deceased,

who was a sister of the said George Tobler, deceased, to wit: Jim Samuels, a 1/55 part; Amy Wilson, a 1/55 part.

A son of Cloa Marshall, deceased, who was a daughter of the said Easy Rowe, deceased, to wit: Thomas Boone, a 1/165 part.

The following named children of Celia Frowe, deceased, who was a daughter of the said Cloa Marshall, deceased, to wit: Wm. London, a 1/495 part; Fred Frowe, a 1/495 part; Georgia Frowe, a 1/495 part.

The following named children of Katie McKillop, deceased, who was a daughter of the said Cloa Marshall, deceased, to wit: Florence McKillop, a 1/825 part; James McKillop, a 1/825 part; Martha McKillop, a 1/825 part; Victoria Davis, a 1/825 part; Annie Davis, a 1/825 part.

The following named children of Sampson Brown, deceased, who was a son of the said Easy Rowe, deceased, to wit: Johnny Brown, a 1/440 part; Wallace Brown, a 1/440 part; Nellie Brown, a 1/440 part; Edward Brown, a 1/440 part; Russell Brown, a 1/440 part; Harry Brown, a 1/440 part; John Brown, a 1/440 part; Paul Brown, a 1/440 part.

A daughter of Eliza Jackson, deceased, who was a daughter of Rose Alexander, deceased, who was a daughter of the said Easy Rowe, deceased, to wit: Ivy Grayson, a 1/55 part.

(Descendants of Minnie Grayson.)

The following named children of Minnie Grayson, deceased, who was a sister of the said George Tobler, deceased, to wit: Dilsy Hope, a 1/44 part; Richard Grayson, a 1/44 part; Jack Grayson, a 1/44 part.

The following named children of Dinah Tucker, deceased, who was a daughter of the said Minnie Grayson, deceased, to wit: Mima Byrd, a 1/132 part; Betty Tucker, a 1/132 part.

The following named children of Mary Jones, deceased,

who was a daughter of the said Dinah Tucker, deceased, to wit: Luther Jones, a 1/528 part; Alice Jones, a 1/528 part; Robert Jones, a 1/528 part; Wyatt Jones, a 1/528 part.

(Descendants of Jack Tobler.)

A daughter of Jack Tobler, deceased, who was a brother of the said George Tobler, deceased, to wit: Lizzie Randall, a 1/22 part.

A daughter of Jerry Stedham, deceased, who was the son of the said Jack Tobler, deceased, to wit: Rachel Edwards, a 1/44 part.

A son of Cora Island, deceased, a daughter of Jerry Stedham, deceased, to wit: Johnnie Island, a 1/44 part.

FOURTH.

That James A. Harris and William H. Harris are the owners of the interests of Micey Keys and Jim Boy Tobler as above set forth, that is to say, of 2/11 of the undivided one-half of the lands in controversy, that the descendants and the widow of Jim Boy Tobler, Nellie Harris, have no interest in said lands. That the above named kindred and heirs of Gertrude Grayson, except Micey Keys and Jim Boy Tobler, are the owners in fee and entitled to the immediate possession of the respective shares and portions of the undivided one-half of said lands as above set forth, equaling in all 9/11 of the undivided half of said lands, and that James Bramm is the owner in fee of an undivided one-half of the Southwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northwest Quarter of Section Twenty-nine, and the North Half of the Northeast Quarter of Section Thirty, in Township Eighteen, North of Range Twelve East.

FIFTH.

That the plaintiffs and intervenors should recover possession of their respective undivided shares and interests in said lands as above set forth.

SIXTH.

That an accounting should be had of the oil and gas and the proceeds thereof taken from said lands by the defendants James A. Harris and William H. Harris, and that they should account to the plaintiffs and intervenors therefor in the proportion of their respective interests in said lands as above set forth, and as found upon the taking of said account.

SEVENTH.

That the Ohio Cities Gas Company should account and pay over to the plaintiffs and intervenors as their interests appear herein for one-eighth of the oil and gas or the proceeds thereof taken by it from said lands since the bringing of this suit.

EIGHTH.

That the plaintiffs and intervenors are entitled to a partition of the Southwest Quarter of the Northeast Quarter of and the Southwest Quarter of the Northwest Quarter of Section Twenty-nine and the North Half of the Northeast Quarter of Section Thirty, all in Township Eighteen North of Range Twelve, East.

Decree.

It is therefore considered, adjudged and decreed by the Court that James Brann is the owner in fee of an undivided one-half of Southwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northwest Quarter of Section Twenty-nine, and the North Half of the Northeast Quarter of Section Thirty, all in Township Eighteen, North of Range Twelve East.

That James A. Harris and William H. Harris are the owners in fee each of an undivided 1/22 of all the lands in controversy herein, to wit:

Lot Two and the Northeast Quarter of the Northeast

Quarter and the Northwest Quarter of the Northwest Quarter of the Southeast Quarter of the Northeast Quarter of Section 31, in Township 17 North of Range 12 East, and the Northwest Quarter of the Southwest Quarter of Section 17, and the East Half of the Southeast Quarter of Southeast Quarter and the Northwest Quarter of the Southeast Quarter of the Southeast Quarter and the East Half of the Southwest Quarter of the Southeast Quarter of the Southeast Quarter and the Northwest Quarter of the Southwest Quarter of the Southeast Quarter of the Southeast Quarter of Section 20, all in Township 18 North of Range 12 East, and all in Creek County, Oklahoma.

The Southwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northwest Quarter to Section 29, and the North Half of the Northeast Quarter of Section 30, all in Township 18 North of Range 12 East, in Creek County, Oklahoma.

That the intervenors and the following named plaintiffs are the owners in fee respectively of undivided interests in all of the land last above described and that the undivided interest of each of them in said lands is as follows:

Isom Grayson, 1/66; Pauline Carolina, 1/528; Alice Carolina, 1/528; Bertha Grayson, 1/528; Gertie Carolina, 1/528; Polly Grayson, 1/528; Lucy Williams, 1/528; Dock Grayson, 1/528; Zack Grayson, 1/528; Jack Stitham, 1/198; Delilah Hutton, 1/594; Sam Haynes, 1/594; Alice Hunter, 1/594; Rose Haynes, 1/594; Rayford Hutton, 1/594; Sam Stitham, 1/1188; Leatha Stitham, 1/1188; Hattie Givens, 1/198; George Harris, 1/198; Jennie Brooks, 1/990; Clarence Brooks, 1/990; Lucy Brooks or Boyce, 1/990; Hattie Brooks or Boyce, 1/990; Beatrice Brooks or Boyce, 1/990; Joe McIntosh, 1/462; Wiley McIntosh, 1/462; John McIntosh, 1/462; George McIntosh, 1/462; Rebecca Turner, 1/462; Elzora Fields, 1/462; Mamie Davis, 1/2310; Willie Smith, 1/2310; Johanna Smith, 1/2310; Henry Smith, 1/2310; George

Smith, 1/2310; Prince Lewis, 1/264; Eddie Lewis, 1/264; Sarah McSwain, 1/1320; Jesse Lewis, 1/1320; Elmore Lewis, 1/1320; Robert Lewis, 1/1320; Lennie Lewis, 1/1320; Mary Manuel, 1/792; Roy McIntosh, 1/792; Roxyana McIntosh, 1/792; Berry Friday, 1/220; Louis Friday, 1/220; Jack Friday, 1/220; Bennie Friday, 1/220; Billy Friday, 1/220; Katie Harrison, 1/220; Julia Durant, 1/220; Edward Friday, 1/220; Dorothy Grayson, 1/220; Tim Watley, 1/660; Beecher Watley, 1/1320; Jack Watley, 1/1320; Beatrice Watley, 1/1320; Myrtle Watley, 1/1320; Billy Grayson, 1/132; Leona Grayson, 1/132; Katie Grayson, 1/132; Lucy Grayson, 1/132; James Grayson, 1/132; Cooper Grayson, 1x132; Dick Thursday, 1/88; Peter Hawkins, 1/704; Joe Hawkins, 1/704; Sambo Hawkins, 1/704; Dave Hawkins, 1/704; Robert Hawkins 1/704; Mack Hawkins, 1/704; Willie Hawkins, 1/704; Tommy White, 1/2112; Rachie White, 1/2112; Jessie Casey, 1/2112; Patsy Harrison, 1/88; Rose Corbray, 1/264; Mary Corbray, 1/264; Nettie Perry, 1/1056; Ester Lee Perry, 1/1056; Willie May Perry, 1/1056; Lucile Perry, 1/1056; Joe Stephens, 1/88; Morris Stephens, 1/88; Joe Grayson, 1/440; Leah Cully, 1/440; Phoebe White, 1/440; Micey Goff, 1/440; Esther Rowe, 1/440; Monday Jamison, 1/176; Jeff Murrell, 1/528; Percilla Murrell, 1/528; Lou Daisy, 1/528; William London, 1/990; Fred Froe, 1/990; Geogia Froe, 1/990; Florence McKellop, 1/1650; James McKellop, 1/1650; Martha McKellop, 1/1650; Victoria Davis, 1/1650; Anna Davis, 1/1650; Thomas L. Boone, 1/330; Ivy Grayson, 1/110; Jim Samuels, 1/110; Amy Wilson, 1/110; Johnny Brown, 1/880; Wallace Brown, 1/880; Nellie Brown, 1/880; Edward Brown, 1/880; Russell Brown, 1/880; Harry Brown, 1/880; John Brown, 1/880; Paul Brown, 1/880; Dilsey Hope, 1/88; Richard Grayson, 1/88; Jack Grayson, 1/88; Mima Byrd, 1/264; Betty Tucker, 1/264; Luther Jones, 1/1056; Robert Jones, 1/1056; Wyatt Jones, 1/1056; Alice Jones, 1/1056; Elizabeth Randel, 1/44; Rachel Edwards, 1/88; Johnie Island, 1/88. And the titles and interests of the various parties in said lands as above set forth are hereby confirmed.

It is further adjudged and decreed by the Court that the aforesaid plaintiffs and intervenors have and recover possession of their respective interests in said lands and that they have restitution therefor.

It is further adjudged and decreed that the plaintiffs are entitled to a partition of the partition of the Southwest Quarter of the Northeast Quarter and the Southwest Quarter of the Northwest Quarter of Section Twenty-nine and the North Half of the Northeast Quarter of Section Thirty, all in Township Eighteen, North of Range Twelve East.

And that said land be partitioned according to the interests of the parties therein as hereinbefore set forth and confirmed.

It is further ordered that R. N. Whittlesey, Waldo Huycke and L. S. Bayrell be, and they are hereby appointed commissioners to make partition of said land last above described in accordance with the interests of the parties therein as hereinbefore set forth, and if they are unable to make partition of said premises without manifest injury they shall make a valuation of said premises and report to this Court their acts and doing hereunder as provided by law on or before the 10th day of March, 1920.

It is further ordered and adjudged that the defendants, James A. Harris and William H. Harris, on or before the 15th day of March, 1920, make an account to this Court of the oil and gas and the proceeds thereof, taken or received by them from the lands in controversy herein, showing in full the amount received therefor and such necessary expenses and costs of producing the same as they have incurred.

It is further ordered and adjudged that the Ohio Cities Gas Company, on or before the 18th day of June, 1920, makes an account to this Court of the oil and gas taken by them from the lands in controversy, or the proceeds thereof showing the full amount received therefor and such necessary ex-

penses and costs of producing the same as they have incurred.

The question of the appointment of a receiver herein is deferred to be considered by the Court upon further application.

To which judgment and decree the defendants except.

Dated at Sapulpa, Oklahoma, February 21, 1920.

LUCIAN B. WRIGHT, Judge.

In the Supreme Court of the State of Oklahoma.

No. 11,654.

JAMES A. HARRIS ET AL., Plaintiffs in Error,

vs.

ISOM GRAYSON ET AL., Defendants in Error.

Petition In Error.

And now come James A. Harris, William H. Harris and Ohio Cities Gas Company, hereinafter styled plaintiffs in error, and complaining of Isom Grayson and all other plaintiff and defendants in the court below, numbering about one hundred and fifty persons, hereinafter styled defendants in error, and respectfully show to the Court that on, to wit, the 21st day of February, 1920, the District Court of Creek County, in a case then and there pending, wherein Isom Grayson and one hundred and fifty other persons were plaintiffs and these petitioners in error and others were defendants, rendered judgment against these plaintiffs in error and in favor of said defendants in error, awarding to them, wrongfully and erroneously, nine-elevenths (9/11) of two certain allotments of land lying in Creek County, Oklahoma, and known as the Nancy Colbert allotment and the Garfield Colbert allotment, whereby and by reason of which judgment rendered by said

District Court against these petitioners in error, as aforesaid, they feel justly aggrieved and present this their petition in error to this Court, to which is attached a true and correct case-made, and present the following:

(Filed in Supreme Court of Oklahoma, August 17, 1920, William M. Franklin, Clerk).

Assignment of Errors.

1. The court erred in overruling the motion for a new trial by plaintiffs in error.

2. The court erred in refusing to sustain the demurrer of plaintiffs in error to the petition of defendants in error.

3. The court erred in refusing to render judgment for plaintiffs in error on the pleadings.

4. The court erred in refusing to sustain plaintiffs in error's demurrer to the evidence of defendants in error.

5. The court erred in refusing to render judgment on the whole case in favor of plaintiffs in error.

6. The findings of fact by the court are not sustained by sufficient evidence.

7. The decision and judgment of the court are not sustained by sufficient evidence.

8. The findings of fact and conclusions of law and the decree of the court are not supported by sufficient evidence and are contrary to the evidence.

9. The decision and judgment of the court are contrary to law.

10. The court erred in admitting evidence offered by defendants in error over the objection and exceptions of plaintiffs in error because the same was incompetent, irrelevant and immaterial.

11. The court erred in refusing to admit competent and material evidence offered by plaintiffs in error.

12. The court erred in admitting as evidence a printed volume designated as the index to the final rolls of citizens and Freedmen of the Five Civilized Tribes of the Indian Territory as compiled and printed under authority conferred by Act of Congress without testimony to identify the parts which were material and which testimony was admitted over the objection of plaintiffs in error.

13. The court erred in refusing to decide and hold that on the death of Gertrude Grayson, the title to the land in controversy herein became vested in her maternal grandmother, Gloria Grayson.

14 The court erred in refusing to decide and hold that the cause of action, as stated and set up by defendants in error in their pleadings, was and is barred by the statute of seven years limitations.

15. The court erred in refusing to decide the issues in favor of plaintiffs in error and to render judgment in their favor accordingly.

16. The court erred in allowing amendments to the case-made, which amendments are set out and shown in said case-made between pages 769 and 770 over the objection of counsel for plaintiffs in error.

Wherefore, plaintiffs in error pray the Court to review the trial of this cause in the District Court of Creek County, and to correct the many errors committed by said trial court, and reverse said judgment and here render judgment in favor of plaintiffs in error.

ROBERT F. BLAIR
G. EARL SHAFFER,

Attorneys for Plaintiffs in Error.

In the Supreme Court of the Satae of Oklahoma.

JAMES A. HARRIS ET AL., Plaintiffs in Error.

vs

I. GRAYSON ET AL., Defendants in Error.

No. 11,654—Opinion Filed May 29, 1923.

Opinion.

(Syllabus.)

Creek Indians—Descent and Distribution—Supplemental Creek Treaty June 30, 1902 (32 Stat. L. 500, Stat. Const.).

1. The Supplemental Creek Agreement of June 30, 1902, 32 Stat. at L. 500, providing that the descent of Creek allotments should be according to chapter 49 of Mansfield's Digest of the Laws of Arkansas, and the proviso of section 6 of said treaty, providing: "That only citizens of the Creek Nation, male and female, and their Creek descendants shall inherit lands of the Creek Nation: And provided further, that if there be no person of Creek citizenship to take the descent and distribution of said estate, then the inheritance shall go to non-citizen heirs in the order named in said chapter 49—." *Held*, said proviso controls, and confines the devolution of the allotment of a deceased Creek allottee on first descent to Creek citizens or their Creek descendants, but is inapplicable on second descent of such allotment, and the descent of such an allotment, after first descent, is controlled by the applicable provisions of chapter 49 of Mansfield's Digest of the Statutes of Arkansas.

Record examined, and held, that the trial court committed reversible error in applying the provisions of the proviso of section 6 of said treaty to the estate of the deceased, such deceased having died in April, 1907, and said estate not being the allotment of said deceased, but having come to said deceased by inheritance.

Error from District Court of Creek County, Hon. Lucien B. Wright, Judge.

Action by Isom Grayson et al., against James A. Harris et al., to recover certain lands located in Creek County. Judgment for plaintiffs. Defendants appeal. Reversed and remanded, with instructions.

Geo. S. Ramsey, G. Earl Shaffer and Robert F. Blair, for plaintiffs in error.

Thos. H. Owen, A. A. Hatch, Watts & Watts, Gidney & Gidney, Turner & Turner, W. T. Hunt, A. C. Hunt, Wallace & Stevens, J. T. Smith, John E. Williams and Alvin F. Molony, for defendants in error.

Opinion *Per Curiam*: This appeal is prosecuted from a judgment of the District Court of Creek County, Okla., decreeing possession and ownership of the lands involved therein to the plaintiff, Isom Grayson and others, who filed said suit in said court against James A. Harris and William H. Harris and others. The facts out of which the litigation arises are briefly these:

An undivided one-half interest in two allotments was sued for by the plaintiffs. One allotment was made in the name of Nancy Colbert, a freedman citizen of the Creek Nation, roll No. 5641, who departed this life in the year 1900. The other allotment was made in the name of Garfield Colbert, a freedman citizen of the Creek Nation, roll No. 5640. At the time of the death of the two allottees, the lands in question had not been set apart to them. The lands were set apart in their names in the summer of 1906, and at that time one Gertrude Grayson succeeded to the half interest in question by operation of law in both said allotments. The said Gertrude Grayson departed this life in April, 1907, intestate, never having been married, and without issue, and it is the interest which the said Gertrude Grayson is admitted to have had at her death that is in controversy here. The other half interest is not in litigation, and there is no occasion to make reference thereto.

There are several questions raised by the plaintiffs in

error for reversal of the cause, but no useful purpose can be served by a discussion of any of the questions involved other than the one controlling the proper disposition of the case. The record discloses, and it is not disputed, that at the time of the death of the said Gertrude Grayson, who succeeded to the half interest in the said land on the selection thereof as one of the heirs of the persons in whose names the land was set apart, she left surviving her as her sole heir at law her maternal grandmother, Cloria Grayson, if the general provisions of chapter 9 of Mansfield's Digest of the Statutes of Arkansas are held to govern the devolution of the property on the death of the said Gertrude Grayson, and are not superseded by the proviso to section 6 of the Supplemental Creek Agreement of July 1, 1902. The said Gertrude Grayson took this land free from restrictions imposed by the Act of Congress, and she could have alienated the same, but for the fact that she was a minor, only 15 years of age, at the time of her death. The question is, Which of her relatives inherited from her the property in controversy?

The defendants in error, the plaintiffs below, were related to her, the degrees, etc., of which relationship it is unnecessary to discuss. They are citizens of the Creek Nation. Gertrude left surviving her a maternal grandmother, Cloria Grayson, a noncitizen of the Creek Nation. Had Cloria Grayson been a citizen of the Creek Nation, it is not disputed that she would have inherited the half interest owned by Gertrude at the time of her death, and the plaintiffs in error, James A. Harris and William H. Harris, by *mesne* conveyances from the said Cloria Grayson, are the unquestioned owners of the one-half interest in said land which they claim. But said Cloria Grayson, maternal grandmother, as aforesaid, of the said Gertrude, being a noncitizen of the Creek Nation, the right of the said plaintiffs in error to a judgment in their favor—not now discussing the other questions in issue—depends upon whether or not the said Cloria Grayson, a noncitizen, could take the inheritance from Gertrude Grayson.

If the said Cloria Grayson is cut off from inheriting from her grandchild, Gertrude, it is by reason of the first proviso to section 6 of the Supplemental Creek Agreement. Without quoting section 6, the proviso reads as follows: "Provided, that only citizens of the Creek Nation, male and female, and their Creek descendants, shall inherit lands of the Creek Nation," etc. This draws directly in issue what application, if any, this proviso has to a second inheritance of lands which have been alloted under the allotment acts to the various enrolled citizens of the Creek Tribe of Indians. If this proviso does not exclude Cloria Grayson from inheriting, the general provisions of chapter 49 of Mansfield's Digest, Statutes of Arkansas, which were placed in force in the Indian Territory, of which the Creek Nation was a part, in 1897, and further reenacted and placed in force by the act of April 28, 1904 (33 Stat. L. 573), would be the governing law as to this inheriance and the said Cloria Grayson was the sole heir of Gertrude.

The true intent of Congress and of the Creeks can best be ascertained by looking to the acts carrying out the scheme to divide in severalty the tribal property. Schulthis v. McDougal, 170 Fed. 532.

Section 7 of the Original Creek Agreement made the Creek law applicable only to allotments—by this language referring to the homestead part thereof—"The homestead of each citizen shall remain after the death of the allottee for the use and support of children born to him after the ratification of this agreement, but if he have no such issue * * * *the land* (his allotment homestead), shall descend to his heirs, according to the laws of descent and distribution of the Creek Nation." Nothing is said as to who shall take on death of the first heirs. At that time, the law of succession contained in chapter 49, Mansfield's Digest, was the law of the forum. It cannot be successfully argued that this provision of the Creek law, governing the descent of the homestead allotment referred to as "the land," extended to abrogate the general

statute to such an extent it would not control where the Creek law heir had once taken and in turn died intestate and seized of the land. A fair reading cannot extend the Creek law further than the first descent, and "the land" other than the allotment specifically mentioned. Section 28 of the Original Creek Agreement has no more extended meaning, except "allotment of lands" and "lands" therein used covered both the homestead referred to in the quoted part of section 7, as well as surplus land, it taking both to make the allotment. Nothing can be read into this section which abrogated the general statute on succession, except as to the first succession, to land referred to therein as "allotment of lands." Section 28, supra, of the Original Creek Agreement of March 1, 1901, after providing as of what date citizens should be enrolled on the final rolls to be prepared by the Commission to the Five Civilized Tribes, recited:

"If any such citizen has died since that time, or may hereafter die before receiving his allotment of lands, and distributive share of all of the funds of the tribe, the lands and money to which he would be entitled, if living, shall descend to his heirs, according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly."

Said section 7, supra, of the same act, in effect, provided that in case of death, homestead *lands allotted* to citizens should descend to their heirs, according to the laws of descent and distribution of the Creek Nation.

Shortly thereafter, and in 1902, through the act of May 27, 1902, and July, 1902, the Creek law of descent was changed, and section 6 of the Supplemental Creek Agreement provided:

"The provisions of the act of Congress approved March 1, 1901 (31 Stat. L. 861), in so far as they provide for descent and distribution according to the laws of the Creek Nation, are hereby repealed, and the descent and distribution of land

and money provided for by said act shall be in accordance with chapter 49 of Mansfield's Digest of the Statutes of Arkansas, now in force in the Indian Territory, provided that only citizens of the Creek Nation, male and female, and their Creek descendants, shall inherit lands of the Creek Nation, and provided further that if there be no person of Creek citizenship or descendants to take the descent and distribution of said estate, the inheritance shall go to noncitizen heirs, in order named in said chapter 49."

It will be useful to properly understand the provisions of section 28 of the Creek Agreement of 1901, as modified by said section 6 of the Supplemental Agreement, to rewrite the said section 28, and incorporate therein the modifying provisions of section 6 of the Supplemental Agreement. And, as so modified, said section 28 would read substantially as follows:

"All citizens who were living on the 1st day of April, 1899, entitled to be enrolled under section 21 of the act of Congress approved June 28, 1898, * * * shall be placed upon the rolls to be made by said commission under said act of Congress, and if any such citizen has died since that time, or many hereafter die before receiving his allotment of lands and distributive share of all the funds of the tribe, the lands and money to which he would be entitled, if living, shall descend to his heirs, according to the laws of descent and distribution of chapter 49 of Mansfield's Digest of the Statutes of Arkansas, now in force in the Indian Territory, and be allotted and distributed to them accordingly; provided that only citizens of the Creek Nation, male and female, and their Creek descendants, shall inherit lands of the Creek Nation, and provided further that if there be no person of Creek citizenship to take the descent and distribution of said estate, then the inheritance shall go to noncitizen heirs in the order named in said chapter 49."

The Original Creek Agreement merely purported to pro-

vide for the descent of lands directly allotted thereunder, and did not attempt to control the allotment after it had regularly descended to the heir or heirs of the allottee. The Supplemental Creek Agreement was only intended as a supplement to the Original Treaty; and nowhere in section 6 of said Supplemental Agreement can be found any language to indicate that it was intended to extend the scope of the Original Treaty. It only purported to substitute chapter 49 of Mansfield's Digest for the Creek law of descent as provided in the first agreement, and this was its sole accomplishment. The keystone of the acts touching the division was called "an allotment." In the various acts of Congress the allotment was referred to as "lands allotted to citizens," and also as "allotted lands," but each and all such references were to particular tracts, either as set apart to and vested in an individual citizen of the tribe, or to be set apart, as his proportionate share of the public domain of the tribe. The word "lands" might be considered in the Original Agreement and the Supplemental Creek Agreement as having two meanings: First, it was used in reference to the Creek National domain. Second, it referred to an "allotment," "lands allotted," or "allotted lands." "Allotment," "lands allotted," and "allotted lands," wherever found in the Creek treaties, meant that part of the Creek national domain set aside, or to be set aside, to an enrolled citizen of the tribe; the central idea thereof being the 160 acres provided by law each enrolled citizen should receive, and the person who received it was referred to as the allottee. Section 3 of the Original Creek Agreement provided:

"All lands of said tribe * * * shall be allotted * * * to each citizen 160 acres," etc.—and this particular tract was that to which reference was made throughout the acts of Congress by the use of the words "lands allotted," "allotment," and "allotted lands."

Said section 7 of the Original Creek Agreement, in part, provided:

"*Lands allotted* to citizens hereunder (it could have said with the same meaning, 'allotments hereunder') shall not in any manner whatsoever or at any time be incumbered, taken or sold to secure or satify any debt or obligation contracted prior to the date of the deed to the allottee therefor, and such lands shall not be alienable by the allottee or his heirs," etc.

We find therein throughout limitations and restrictions as to two distinct classes of land—allotments and inherited land.

The terminology "inheritance" carries two elements—the *thing* which passes by the rule of descent from someone who was the prior owner thereof, and the *person* who takes by operation of law. If we interpolate into the provisions of the proviso as above set forth the words of section 7, supra, of the same import, we have it read:

"Provided that only citizens of the Creek Nation and their Creek descendants shall inherit lands (allotted to citizens) of the Creek Nation, and provided, further, that if there be no person of Creek citizenship to take the descent and distribution of said estate (the interest of the allottee or person in whose name they are set apart, in lands allotted to him), then the inheritance (the lands allotted to the citizen who has died), shall go to noncitizen heirs in the order named in chapter 49."

The words in said provisos 1 and 2, to wit, "lands," "said estate," and "inheritance," refer to the same thing, to wit, "the allotment" lands of the Creek Nation set apart to a citizen, and refer to the title which passes to the heir of the allottee. There is nothing in these provisos, when read in the light of the meaning of the terms designating the title passing as "lands," "said estate," and "inheritance," which the various acts show their meaning to be, which has any reference to who shall take such lands by inheritance from a citizen or a descendant of a citizen who had received it by inheritance from the allottee, and in turn died possessed thereof.

In determining the meaning of a statutory provision, and in ascertaining the intent of the lawmakers, words and phrases not used, but necessarily implied from those which are used, are as clearly a part of the act as the written words, and to be so deemed in their appropriate place. 25 R. C. L. p. 976; State v. Phelps (Wis.), 128 N. W. 1041. And if we supply the necessary words to make the legislative intent clear from the relation of similar words throughout the statutes, we have the proviso reading:

"Providing that only citizens of the Creek Nation, male and female, and their Creek descendants, shall inherit (such) lands (allotted to citizens) of the Creek Nation. Provided, further, that if there be no person of Creek citizenship to take the descent and distribution of the said estate (of the allottee in such lands), then the inheritance from such allottee shall go to the noncitizen heirs in the order named in said chapter 49."

It seems, therefore, that the provisos to section 6 have for their purposes the limitation as to inheritance of Creek allotments, only from the allottee himself, or the first succession.

To hold otherwise, that is, to concur in the argument that the provisos of section 6 of the Supplemental Agreement apply to the second descent in the same manner as they are admitted to apply to descent from the allottee, would be to say that the intent of the government and the tribe was to place a continuous and perpetual restriction upon the lands which once constituted the tribal lands. For if the provisos would apply to the second descent, they would as readily apply to the third and the fourth and on forever. A restriction of this type upon the lands would materially depreciate their value to the owner and would encourage all types of subterfuge to prevent the operation of the provisos. Therefore, in view of the apparent absurdity of such a construction of section 6, supra, this court cannot presume that such was the

intent of the parties formulating the Supplemental Agreement.

In the case at bar, it is not disputed that Cloria Grayson, the maternal grandmother of Gertrude Grayson, on the death of the said Gertrude, inherited the land which is now in litigation, unless precluded by reason of her being a non-citizen of the Creek Nation. Since we have reached the conclusion that the said provisos to said section 6 have no application to a second inheritance, as here involved, the devolution of the land in question owned by the said Gertrude Grayson in April, 1907, went to her maternal grandmother, who in turn, in the exercise of her right, conveyed the same; and the title thereto, by mesne conveyances, is vested in the said plaintiffs in error.

The judgment of the trial court should, therefore, be reversed, with instructions to enter judgment quieting the title of the defendants, James A. Harris and William H. Harris, in the lands in controversy.

JOHNSON, KANE, KENNAMER, NICHOLSON, COCHRAN, BRANSON, HARRISON, MASON, JJ., concur.

In the Supreme Court of the State of Oklahoma.

No. 11,654

JAMES A. HARRIS ET AL., Plaintiffs in Error,

vs.

ISOM GRAYSON ET AL., Defendants in Error.

Petition For Re-Hearing.

Comes now Isom Grayson and all other defendants in error in the above styled and numbered cause, by their attorneys of record, and respectfully represent to the court that on the 29th day of May, 1923, a decree and judgment was rendered by this court in said cause reversing the judgment

of the trial court rendered in said cause and remanding same with instructions to render judgment in favor of the plaintiff in error confirming their title to the lands in controversy.

Said decision and judgment of this Court was erroneous and contrary to the provisions of Section 6 of an act of the U. S. Congress June 30th, 1902, 32 Stat. 500, and in conflict with the judgment and decision of the Supreme Court of the United States in the case of Washington v. Miller, 235 U. S. 422, 59 L. ed. 295, and the judgments and decisions of this Court rendered in the cases of Iowa Land & Trust Company v. Dawson, 37 Okla. 593, 134 Pac. 39, and Thompson v. Smith, Okla. App. Rep. April 19th, 1923 (not officially reported), and various other cases of like effect and import both of the United States Supreme Court and this Court.

Wherefore, the defendants in error pray that a rehearing of said cause may be granted by this Honorable Court and that the judgment of the trial court be affirmed.

THOS. H. OWEN, Oklahoma City,
WATTS & WATTS, Wagoner,
A. F. MOLONY, Tulsa,
TURNER & TURNER, Eufaula,

Attorneys for Defendants in Error.

(Proof of Service Attached.)

Filed in Supreme Court of Oklahoma, June 12, 1923.

WILLIAM M. FRANKLIN, Clerk.

State of Oklahoma, County of Oklahoma, ss:

Thos. H. Owen, being duly sworn, says that he served the within petition for re-hearing by mailing a true and correct copy of same to R. F. Blair, attorney of record for plaintiffs in error, on June 12th, 1923, in an envelope with postage prepaid addressed to said R. F. Blair at Tulsa, Oklahoma, his place of residence.

THOS. H. OWEN.

Subscribed and sworn to before me this 12th day of June, 1923.

G. D. STROTHER, Notary Public.

My Comm. Exp. July 19, 1926.

In the Supreme Court of the State of Oklahoma.

No. 11,654.

JAMES A. HARRIS ET AL., Plaintiffs in Error.

vs.

ISOM GRAYSON ET AL., Defendants in Error.

Petition For Rehearing.

Comes now the defendants in error, Berry Friday, Louis Friday, Jack Friday, Bennie Friday, Billie Friday, Katie Harrison, Julia Durant and Edward Friday, in the above entitled cause, and respectively represent to the Court that on the 29th day of May, 1923, this Court reversed the judgment of the District Court of Creek County with instructions to render judgment quieting the title of plaintiffs in error, James A. Harris and William H. Harris, in the lands in controversy.

That the Court overlooked the fact that its holding in this case is in conflict with the holding of the Supreme Court of the United States. The Original Creek Agreement, Sec. 28, provided that each citizen living on the 1st day of April, 1899, should be entitled to be enrolled and further provided that in the event he should die, his land and money to which he would be entitled, if living, should go to his heirs under the Creek Statute of Descent and Distribution. The Creek Statute of Descent and Distribution was thereafter changed by Supplemental Creek Agreement which put in force and effect the Arkansas Statute of Descent and Distribution, with the proviso that non-citizens should only inherit upon failure of Creek heirs. We have then the Original Creek Agreement

approved March the 3rd, 1901, giving to Gertrude Grayson certain rights in the lands of the Creek Nation which rights were somewhat changed by Supplemental Creek Agreement which went into effect the 1st day of July, 1902, to wit: The right to be enrolled and to receive her share of the lands of the Creek Nation, 160 acres, and in addition certain rights in lands of deceased relatives as provided therein and changed by Supplemental Creek Agreement. Neither Nancy Colbert, Garfield Colbert nor their mother, Louisa Colbert, ever had any interest in the lands in controversy prior to their death other than the ownership in common of tribal property held before allotment by all members of the tribe for they had all died in 1900 prior to the Original Creek Agreement providing for the allotment of Creek lands to members of the tribe, and the changes thereafter made by the Supplemental Creek Agreement. The first time the status of the interest of the lands in controversy changed from the old tribal state of ownership in common was when selection was made in summer of 1906, and an estate of inheritance vested in Gertrude Grayson. We respectively submit that it would be as consistent to say in view of the decisions of the Supreme Court of the United States that the allotment, allotted to Gertrude Grayson as her share of the lands of the Creek Nation was a second descent by reason of the fact she was a member of the Creek Tribe because of the blood of her parents as to say that this is a second descent when the interest in the lands in controversy came to her as direct from tribe as her own allotment. Referring to such lands as an estate of inheritance was clearly a legal fiction indulged in by the Supreme Court of the United States to accomplish the purpose of Congress and the Creek Nation and in no sense applicable to holding a controversy like the one at bar a second descent.

In Shultus vs. McKay, 237 U. S. Supreme Court Reports, page 382, quoting from Shultus vs. McDougal, 170 Fed. 529, the Court said:

"So long as the tribal relation continued, a member had no right to have a share of the tribal property set off to him as his private, separate estate, for the constitutional policy of the tribe was ownership in common. But when, as here, the time came to disband the tribe, its ownership as a political society could no longer continue, and the division of its property was for more nearly akin to the partition of property among tenants in common than the grant of an estate by a sovereign owner. Under such a scheme it cannot be said that the property which passed to an allottee is a new right or acquisition created by the allotment. The right to the allotment antidates the allotment, and is simply given effect to by that act. Viewing the tribal property and its division in this light, Andrew J. Berryhill acquired his rights to the land in question by his membership in the tribe. It was his birthright. It came to him by the blood of his tribal parents, and not by purchase. In applying the Arkansas Statute, we shall accomplish the purpose of Congress and the Creek Nation best by treating the lands not as a new acquisition by him, but as an inheritance from his parents as members of the tribe. His father was the only parent through whom he derived his right and to the father the land should pass. If the mother had been a member of the tribe, then the property should pass to the parents equally. From this premise it necessarily follows that George Franklin Berryhill succeeded to the entire estate of the property in question."

In Washington vs. Miller, 59 Law ed., page —, the Supreme Court of the United States, said:

"Applying this section to the facts of this case, the Supreme Court of the State held that the father, although an heir according to Chapter 49 of Mansfield's Digest, was excluded by the two provisos from the right to inherit, because he was not a Creek citizen, and the mother,

who was such a citizen, had an inheritable status according to that chapter.

"The first contention requiring consideration is that the two provisos do not affect the right to inherit from one who dies after receiving his allotment, but only the right to receive lands from the tribe in place of one who was entitled to an allotment and died before receiving it. The contention rests upon the words 'lands of the Creek Nation' in the first proviso, and is sought to be sustained upon the theory that lands which have been allotted and passed into private ownership are no longer lands of the tribe, and therefore not within the provisos. We think that the words indicated were merely descriptive of the body of lands which were being allotted in severalty and subjected to the incidents of individual ownership; that is, the lands in the Creek Nation.

"In that sense they would include the lands as well after allotment as before. The section as a whole shows that it looked to the future no less than the present, and was intended to prescribe rules of descent applicable to all Creek allotments. Nothing in the proviso indicates that they were to be less comprehensive. Their purpose was to give Creek citizens and their Creek descendants a preferred right to inherit, and no reason is perceived for giving such a preference where a citizen entitled to an allotment died before receiving it that would not be equally applicable if he had died after it was received. We conclude, therefore, that the contention was not well founded."

In Campbell vs. Woodworth, 63 Law ed. 196, the Supreme Court of the United States, in construing the proviso, said:

"While it is true that it seems unnatural for the Indians to have preferred more distance relatives to their own children in providing for the descent and distribution of their property, yet from the terms of the act before us, and also from the provisions of the Supplemental

Creek Agreement that 'only citizens of the Creek Nation,' 32 Stat. at L. 500, Chap. 13,230, it is clear that with the Indians the interest of the Tribe was paramount to those of the family, and it was with a knowledge of the mode of life of their primitive people, better and more intimate than the courts can now command, that they determined that this paramount purpose would best be served by giving to children born of mixed marriages the tribal status of their mother."

The Court further overlooked the fact that this Court has uniformly held for a great many years in conformity with the above doctrines laid down by the Supreme Court of the United States and other Federal Courts. In Ross vs. Wertz, 172 Pac., page 970, in summing up and after quoting from the Shultus vs. McDougal case, 170 Fed. 529, this Court said:

"The controlling idea in the opinion is that it was the purpose of Congress and of the Indians to preserve such property only to the members of the tribe. The holding in that case has become a rule of property in this state, and has been accepted if not indorsed by the Supreme Court of the United States. McDougal vs. McKay, 237 U. S. 372; Pigon et al. vs. Buck, 237 U. S. 386. * * * The Supreme Court of the United States in McDougal vs. McKay, says: 'And not only would it be improper for us to disregard the effect of the decisions already announced by the Circuit Court of Appeals and the Supreme Court of Oklahoma, which are supported by cogent reasoning, but considering the peculiar and rapidly changing conditions within the State, especial consideration must be accorded to them. We accordingly accept the doctrine announced therein * * *.'"

The Court further overlooked the fact that the interest in the lands in controversy in this action were restricted lands until the death of Gertrude Grayson in 1907. Gertrude Gray-

son was a minor. The Act of April the 26th, 1906, contained a provision that minor heirs might join in conveyances with adult heirs, but the first Act that removed restrictions upon the lands of minor Creeks was the Act of May the 27th, 1908, adopted after the death of Gertrude Grayson.

Wherefore, defendants in error, Berry Friday, Louis Friday, Jack Friday, Bennie Friday, Billie Friday, Katie Harrison, Julia Durant and Edward Friday, pray that rehearing of said cause may be granted by your Honorable Court.

J. T. SMITH,

Attorney for Defendants in Error, Berry Friday, Louis Friday, Jack Friday, Bennie Friday, Billie Friday, Katie Harrison, Julia Durant and Edward Friday.

And thereafter on July 3rd, 1923, in the Supreme Court of Oklahoma, the following proceedings were had in said cause:

Order Overruling Petition For Rehearing.

Supreme Court, June Term 1923, July 3rd, 1923, Eighth Judicial Day.

No. 11,654.

J. A. HARRIS ET AL., Plaintiffs in Error,

vs.

ISOM GRAYSON ET AL., Defendants in Error.

And now on this day it is ordered by the Court that the petition for rehearing filed in the above cause be and the same is hereby denied.

In the Supreme Court of the State of Oklahoma.

No. 11,654.

JAMES A. HARRIS, ET AL., Plaintiffs in Error,

vs.

ISOM GRAYSON, ET AL., Defendants in Error.

Certificate as to Record.

I do hereby certify that the record on which the final opinion in the above cause was based consists of the pleadings and the special findings and judgment of the District Court of Creek County, Oklahima.

In witness whereof I have set my hand this 25th day of September, 1923.

J. T. JOHNSON,

Chief Justice of Oklahoma Supreme Court.

Attest:

WILLIAM M. FRANKLIN, Clerk.

(Seal) By RUELL HASKELL, Assistant.

Certificate.

I, Wm. M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing ----- pages, numbered from 1 to ----, inclusive, contain a full, true and correct transcript of the pleadings and the special findings and judgment of the District Court of Creek County, Oklahoma, referred to in the foregoing certificate of the Chief Justice of the Supreme Court of Oklahoma, and of the petition in error; opinion; petitions for rehearing; the order denying said petitions for rehearing and the certificate of the Chief Justice of the Supreme Court above mentioned, in the case of J. A. Harris et al., plaintiffs in error, vs. Isom Grayson et al., defendants in error, number 11,654, as the same remain upon the files and records of said Supreme Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Supreme Court, at the City of Oklahoma City, Oklahoma, this the ---- day of September, A. D. 1923.

Wm. M. FRANKLIN,
Clerk Supreme Court of Oklahoma.

By RUELL HASKELL, Jr.,
Assistant.

1. 479] IN THE

DISTRICT COURT OF CREEK COUNTY, STATE OF OKLAHOMA

[Title omitted]

positions of witness taken to be use*x* in an action pending in the District Court within and for the County of Creek, in the State of Oklahoma, wherein Isom Grayson et al. are plaintiffs and James A. Harris et al. are defendants, in pursuance of the notice hereto attached and at the time and place therein stated.

Mr. H. H. Hatch appeared for the Plaintiff and Robert F. Blair peared for the Defendants, and JAMES BRANN, Esq. being first ly sworn as a witness for defendants, testified as follows:

Direct examination of witness by Mr. Blair:

Q. State your name, your place of residence and your occupation.
A. James Brann, Bartlesville, Oil Producer.
Q. Mr. Brann are you familiar with the land in controversy in is litigation, namely, the allotment of Garfield Colbert lyin*t* in ction 29 and 30, Township 18 Range 12?
A. I am.
Q. I wish you to state what, if any, part of that allotment you vn and when you became the owner of it, and what if any——
A. The summer of 1906 I purchased through George C. Butte nd Dan C. Dabney the 2–40 acre pieces situated in Section 29-18-12, nd took a lease on 80 acres in 30-18-12 from an oil and gas lease.
fol. 480] Q. What was done by you with reference to having Mr. Butte remove certain clouds to that property, and when?
A. Immediately after our deed was placed of record, I think in he fall of the same year, there were some other deeds placed of ecord,—some from the same parties that we obtained our deed from nd from others, and I instructed Mr. Butte, as my attorney, to ook into the matter and if any of them had any claim on the roperty or looked as if they might make any trouble to purchase hem.
Q. From the abstract of title I now hand to you refresh your nemory and state if these deeds were some of the cloud you spoke of.
A. Warranty deed Perry D. Colbert to J. T. Haizlip, dated August 28, 1906, warranty deed Ed. D. Colbert and Mary Jane Colbert to W. F. Schuermeyer, dated April 29, 1907.
Q. Here is another one appearing on record June 25, 1907, Babe Williams to Oklahoma Land Company, was that another one of he deeds you have reference to?
A. I think it was. I don't remember exactly what he did, because I left all the clearing of the title to Mr. Butte, but there was some four or five deeds placed of record shortly after we obtained

our deed which I advised him to clear up and if they had any merit, I didn't want any cloud on the title if I could avoid it.

Q. What did Mr. Butte advise you to do,—take possession of this land.

Mr. Hatch: Plaintiff objects for the reason that it is immaterial as to Mr. Butte advising him.

Q. What did Mr. Butte advise you to do and what in fact did [fol. 481] you do about that time with reference to taking possession of this land.

Mr. Hatch: Same objection as recorded above as to what Mr. Butte advised him.

A. Mr. Butte advised that there was no merit in any of the deeds against this land and our deed. He advised me to proceed to take possession and operate the property that the deeds were all made for the purpose of obtaining money without any title whatever.

Q. What did you do then with reference to taking possession?

A. I took possession of the land, but I could not say just exactly the time when that occurred. To the best of my knowledge and belief without anything to confirm that it was some time in the late summer or early fall of 1907.

Q. What did you do when you took possession. What did you do on the land—build anything on it?

A. Yes, I got out timber for rigs and built a lease house.

Q. Did Butte succeed in getting a settlement with all the parties who then or thereafter made claims against the land, if not which one did he fail to compromise and settle with?

A. My rememberance is that he bought all of them except Bell of Wagoner.

Q. Did you recognize any of the claims of any one or anybody to possession or right in the land, or did you hold possession exclusively against everyone?

A. I held possession against everyone. I didn't recognize any claim until the court made a decision.

Q. After that Brann against Bell in the Federal Court—what was the result of that suit?

[fol. 482] A. Finally determined all that part of the Gardield Colbert land which was involved in that suit. We settled by decree of court taking half and half—Bell and others half and we have half of it.

Q. Was held by the Federal Court that the maternal hald went to Bell and associates and the paternal half went to you?

A. Yes, finally decided and divided.

Q. After that decision of the Federal Court you, Bell and Harris, have owned it as an undivided half—half and half.

A. Yes, we have operated as co-tenants.

Cross-examination of Witness by Mr. Hatch:

Q. When was that decision of the court—Brann vs. Bell?

A. I think in August, 1912.

Q. That was a compromise judgment was it not?
A. Not exactly. The court had already decided that under the Arkansas statute that each of the parents inherited one half of the land.
Q. You claimed under the paternal side?
A. Yes.
Q. Mr. Bell claimed under the maternal side?
A. Yes.
Q. When did Bell set up his claim?
A. I think sometime in the early part of the year 1908.
Q. Your claims were antagonistic?
A. Yes, necessarily.
Q. Who instituted the suit?
A. I did.
Q. To cancel the title?
A. Title as against Bell.
[fol. 483] Q. Bell in possession at that time?
A. No.
Q. Or none of them under whom he claimed?
A. None of them. I held exclusive possession of it.
Q. Was Butte ever in possession?
A. I don't believe he was. I owned half of that all the time—deeded to me.
Q. Your title came from Butte?
A. He acted as attorney for me.
Q. Some of the deeds from the paternal side made to Butte?
A. He bought some from the paternal claimants—Perry Colbert and som- of them Colberts. I don't know what relation to the allottee. He looked after that entirely.
Q. Butte then deeded to you?
A. Yes.
Q. The original from Jim Colbert, the father of the allottee, Garfield Colbert, was 80 acres all of which was made directly to me, and 80 to Dabney and Butte which they leased to me—oil and gas lease.
Q. Did you afterwards obtain the title to the 80 acres you had a lease on?
A. I bought the surface rights, they reserving the mineral rights.
Q. That is to say you obtained the fee, subject to the royalty interest they reserved?
A. All mineral interest. They excluded all mineral interest.
Q. Was Dabney ever in possession?
A. Not that I know of.
Q. You never lived on the place?
A. No not personally. I looked after it and my man was to live there.
[fol. 484] Q. You built a lease house?
A. Yes.
Q. When?
A. Early summer of 1907, believe.
Q. That all you did?

A. I got out some timber at that time and the following year we started drilling an oil well.

Q. What time?

A. I think we moved in the stuff along about August or Sept.

Q. What part of the tract was this lease house on?

A. 40 acres S. W. ¼ of N. W. ¼ of 29-18-12.

Q. That a portion of the 80 acres under lease?

A. No. Portion of the piece deeded to me directly by the father of the allottee.

Q. No one resided on the land until you began to drill the well?

A. No.

Q. When did you take anybody on the land to *k*ive there?

A. I put this man out there as soon as I built the house. He was to build the house and get out timbers.

Q. He live- there until the next year?

A. No, lived in Sapulpa and drove out there until the completion of this house. Began getting timber out to offset some wells.

Q. That was the next *h*ear—1908?

A. 1908 I began operating.

Q. Now all your testimony you have given relates to Garfield Colbert?

A. That is all.

Q. Take any possession of the Nancy Colbert?

A. No interest whate*f*er.

[fol. 485] Redirect examination of witness by Mr. Blair:

Q. As I understand you began in the late summer or early fall of 1907 to build this house and the man went to work and started to get out timbers?

A. Yes.

Q. The reason of your delay in starting active operations in drilling the wells was because Butte, attorney, was unable to get a settlement out of Bell and his associates, and Butte afterwards filed three suits in the District Court of Creek County before you filed your suit in the Federal Court.

A. Yes, we were delayed partly on that account. I realized I had to have a large amount of money to operate and I had to borrow a portion of it. I wanted a good title before I started in to operate. There was no pipe line in that immediate vicinity. I didn't think the property was being greatly injured on account of being unable to ship oil. Partly no chance to sell oil.

Q. Did any of these or anybody else demand of you to recognize them as part owner of the land or seek to take possession from you during the year 1906 or 1907.

Mr. Hatch: Plaintiff objects for the reason that the question is immaterial.

A. No sir.

Q. You held exclusive and adverse possession to everybody?

Mr. Hatch: Plaintiff object- for the reason that the question is immaterial and for the further reason that it calls for a conclusion of law.

A. I did.

[fol. 486] Recross-examination of witness by Mr. Hatch:

Q. Who was it that built this house and afterwards moved on?
A. Mr. William Savage. He was the man who did the work there for me.
Q. Who drilled the well?
A. Frank Sutton.

It is agreed by and between the counsel for the parties to this action that the signature of the witness, James Brann can be and is hereby waived.

[fols. 487-549] Notary's certificate to above paper omitted in printing.

[fol. 550] PLAINTIFF'S EXHIBIT D

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA

Equity. No. 869.

JAMES BRANN, Plaintiff,

vs.

L. A. BELL, JAMES A. HARRIS, and WILLIAM H. HARRIS, Defendants,

and

L. A. BELL, JAMES A. HARRIS, and WILLIAM H. HARRIS, Cross-complainants,

vs.

JAMES BRANN, Cross-defendant.

FINAL DECREE—Filed Feb. 21, 1912

This cause come on for further hearing on this, the 21st day of February, 1912, the same being a regular day of the January Term of this court for 1912, before the Hon. Ralph E. Campbell, Regular District Judge, presiding, whereupon there appeared in court counsel of record for plaintiff and cross-defendant and counsel for defendants and cross-complainants, and stated to the court that the parties to this cause had agreed upon a final settlement and compromise of this litigation, and filed in this court, as a part of the record thereof, a stipulation, in writing, signed by the parties, as follows:

[fol. 551] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA

[Title omitted]

"STIPULATION FOR SETTLEMENT AND DECREE

"This cause is fully and finally and completely compromised and settled by and between the parties to this litigation, and, by this stipulation hereby entered into, Be It Known:

"First. That it is hereby agreed that the decree of this court entered on the 31st day of July, 1911, and recorded of record in Record Book No. 8, at pages 419 to 426, shall be final, in so far as the rights of the parties to this litigation were therein adjudged with respect to the title to the eighty (80) acres of land in controversy, described as follows:

The Southwest Quarter of the Northwest Quarter and the Southwest Quarter of the Northeast Quarter of Section Twenty-nine (29), Township Eighteen (18) North, Range Twelve (12) East, and being and lying in the County of Creek, and State of Oklahoma.

That is to say: The plaintiff, James Brann, is hereby recognized and declared to be the owner of an undivided one-half (½) interest [fol. 552] in said land, and the defendants and cross-complainants, L. A. Bell, James A. Harris and William H. Harris, are hereby declared to be recognized as the holders and owners of the other undivided one-half (½) interest in and to the land described.

Second. The said James Brann, plaintiff, shall be the owner of, and recognized as the owner of, an undivided one-half (½) interest in and to all the improvements, of every kind and character, placed by said James Brann upon said land in the exploration, development and operation of said land for oil and gas purposes; and said James Brann shall be the owner of an undivided one-half (½) interest in all tanks, derricks, casing, machinery, pipe-lines, pumping outfits, engines, engine-houses, teams, stock, and every character of personal property now used in the operation of said land for oil and gas whether said personal property be attached to said land or not; and the said defenda-ts and cross-complainants, L. A. Bell, James A. Harris and William H. Harris, shall be the joint owners of the other one-half (½) undivided interest in and to all the said machinery and appliances of every kind and character above said, and the joint owners of an undivided one-half (½) interest of all the personal property placed upon said land by said James Brann in the exploration and operation of said property for oil and gas, including all machinery, casing, pipelines, engine houses, engines, power-plants tanks, derricks, pumping stations, teams, and everything above-said, wherein James Brann is declared to be an owner of an undivided one-half interest. And said James Brann shall be the owner of an undivided one-hald (½) interest in and to all oil produced from said

land, and now on hand and unsold; and the defendants and cross-
[fol. 553] complainants, L. A. Bell, James A. Harris and William H. Harris, shall be the joint owners of the other undivided one-half of all said oil produced from said land and unsold.

Third. And, in consideration of the sum of Thirty Seven Hundred eight 76/100 Dollars, cash in hand paid by James Brann to the defendants and cross-complainants, L. A. Bell, James A. Harris and William H. Harris, do hereby waive and discharge any and all claims they have against plaintiff, James Brann, for an accounting on account of oil produced and sold from said land by James Brann, and on account of damages thereby; and,

It is agreed that the order of reference, heretofore made, in the decree of this court entered on the 31st day of July, 1911, appointing W. S. Cochran special master to take evidence and make a report as therein directed, be, and the same shall be, set aside and cacated, it being agreed that the plaintiff, James Brann, shall pay one-half (½) of the cost accruing on account of said reference, and the defendants shall pay the other one-half (½) of the cost accruing on account of said reference; and,

It is agreed that the amount of the fee to be allowed the said W. S. Cochran, as special master, shall be fixed and allowed by this court, and a judgment for the same entered by this court against the parties in accordan-e with this stipulation; and,

It is further agreed that the plaintiff shall pay and settle for all cost accruing at his instance in this case, including all his witnesses; and that the defendants shall likewise pay and settle for all the cost accruing in this case, including their witnesses.

[fol. 554] Fourth. And it is agreed that this stipulation shall take effect and settle all rights of the parties hereunder, as of date of January 1st, 1912.

Fifth. It is agreed that this stipulation shall be incorporated into the decree of this court.

Witness our hands and signatures this 19th day of February, 1912.

James Brann, Plaintiff. James A. Harris, William H. Harris, L. A. Bell, Defendants. Witnesses: A. A. Davidson, Geo. S. Ramsey, Robert F. Blair.

And, said stipulation having been filed and presented to the court, it is, therefore, ordered, adjudged, and decreed by the court, in accordance with said stipulation, that the plaintiff, James Brann, is the owner in fee of an undivided one-half (½) interest in and to the land described in the stipulation and the former decree of this court, and, also, an owner of an undivided one-half (½) interest in and to the land described in the stipulation and the former decree of this court, and, also, an owner of an undivided one-half (½) interest in all the improvements, appliances, machinery, personal property and oil unsold, etc., mentioned in the stipulation; and,

It is ordered, adjudged, decreed, and considered that the defendants, L. A. Bell, James A. Harris, and William H. Harris, are likewise owners in fee of the other one-half (½) undivided interest in [fol. 555] and to the land described in the stipulation above and the former decree of this court, and, likewise, owners of an undivided one-half (½) interest in and to all the improvements, machinery, appliances, personal property and oil on hand as described in the stipulation above; and,

It is ordered, adjudged, and decreed that the plaintiff, James Brann, shall pay and settle for all costs accruing in this case at his instance, in accordance with the above stipulation; and that the defendants shall likewise pay and settle for all costs accruing in this case at their instance as provided for in the above stipulation; and

It is further ordered, adjudged, decreed and considered that the plaintiff shall pay one-half (½) of the fee of W. S. Cochran as special master; and the defendants shall pay the other one-half (½) of said fee; and,

It is ordered, adjudged, considered and decreed that this decree shall settle all the matters in controversy between the parties, and be a final disposition of this cause in this court, with the exception that the court reserves the case for the purpose of fixing and determining the amount of compensation to be allowed W. S. Cochran as special master in this cause.

Made and ordered entered on this 21st day of February, 1912.

Ralph E. Campbell, Judge.

[File endorsement omitted.]

[fol. 556] Plaintiff's Ex. E, Def. Harris Exhib. 15

In the Circuit Court of the United States for the Eastern District of Oklahoma

No. 869. Equity

James Brann, Plaintiff,

vs.

L. A. Bell, James A. Harris, and William H. Harris, Defendants,

and

L. A. Bell, James A. Harris, and William H. Harris, Cross-complainants,

vs.

James Brann, Cross-defendant.

Decree—Filed July 31, 1911

This cause came on for hearing before Hon. Ralph E. Campbell, District Judge, regularly presiding, during the regular January Term

of this court sitting at Muskogee, upon the complainant's bill, defendants' answer, defendants' cross-bill, the complainant's answer thereto, the replications, and all the pleadings and all the evidence heretofore taken by the examiner and filed in this record as per order of court, and a copy of the Constitution of the Creek Nation filed as additional evidence filed at the time of the hearing and trial by permission of the court, and, after having heard the argument of counsel for all parties, the court took the case under advisement until the June Term of this court for 1911, at McAlester, and announced, on the 25th day of July, 1911, the same being a regular day of the [fol. 557] regular McAlester Term of court, that from all of which the following appears to the court, to-wit:

1st. That the land in controversy in this case, to-wit:

Southwest Quarter of the Northwest Quarter, and the Southwest Quarter of the Northeast Quarter of Section Twenty-Nine (29), Township Eighteen (18) North, Range Twelve (12) East,

containing eighty (80) acres, more or less was selected for and set apart by the Commission to the Five Civilized Tribes in the name of Garfield Colbert, deceased, on the 9th day of July, 1906, and certificate of allotment issued on that date, as a part of the land to which Garfield Colbert would have been entitled if living;

2nd. That the application for the enrollment of the name of Garfield Colbert on the Creek Freedman Roll of Citizens of the Creek Nation was approved by the Secretary of the Interior in the month of January, 1906, and the name of said Garfield Colbert enrolled as such freedman citizen accordingly;

3rd. That said Garfield Colbert departed this life at the age of four or five (4 or 5) years, some time in the year 1899 or 1900;

4th. That said Garfield Colbert died intestate and without issue; and without any allotment in the Creek Nation having been set apart to him or selected for him prior to his death; that at the time the Supplemental Creek Agreement (32 U. S. Stat. L. 500) was ratified and came into force and effect in the year 1902 the nearest relations of said Garfild Colbert were Jim Colbert, the father, and Gertrude Grayson, a half sister on the mother's side;

5th. That, in the month of May, 1907, the patent was executed by the Principal Chief of the Creek Nation and approved by the Secretary of the Interior, reciting therein as grantee the name of Garfield [fol. 558] Colbert and confirming the title to the land above described in the heirs of Garfield Colbert;

6th. That Garfield Colbert was the legitimate son of a said Jim Colbert and Louisa Colbert, between whom a valid marriage relation existed;

7th. That said Jim Colbert, the father; Louisa Colbert, th mother; and Gertrude Crayson, the half sister, were all duly enrolle freedmen citizens of the Creek Nation not of Indian blood;

8th. That Louisa Colbert, the mother, departed this life intesta some time in the year 1899 or 1900, but whether before or after th death of Garfield Colbert is not decided;

9th. That said Gertrude Grayson, the half sister, died in th month of April, 1907, intestate and without issue, leaving as h nearest relation Gloria Grayson her grand-mother;

10th. That the complainant, James Brann, through and by co veyances in due form from Jim Colbert, the father, is vested with th title to all the interest Jim Colbert ever acquired or owned in and the land in controversy; and,

11th. That the defendants, L. A. Bell, William H. Harris an James A. Harris, by and through conveyances in due form, own a the title and interest acquired and owned by said Gertrude Grays in and to the lands in controversy as a relation and heir of Garfie Colbert, deceased;

12th. That the complainant, James Brann, was in the possessio of the land in controversy under color of title prior to and at th time this suit was instituted.

And on these findings it further appears to the court, and the cou so holds, that Chapter 49 of Mansfield's Digest of the Laws of th State of Arkansas, put in force in the Creek Nation by the Supp [fol. 559] mental Creek Agreement, as shown by Act of Congre approved June 30, 1902 (32 Stat. L. 500), determines and nom nates the hairs of Garfield Colbert, deceased, as the beneficiaries the grant from the Creek Nation shown by the selection, certifica of allotment and patent duly issued as above; and the court hol that, under said Chapter 49 of Mansfield's Digest of the Laws of t State of Arkansas, Jim Colbert, as the father and heir of Garfie Colbert, deceased, did, by virtue of said allotment and conveyan thereof, become the owner of an undivided one-half (½) interest said land in controversy heretofore described, and that said Gertru Grayson, the half sister of Garfield Colbert, deceased, did likewise, virtue of said allotment, become the owner of the other and remai ing undivid one-half (½) interest in and to said lands in cont versy, and that said Jim Colbert, the father, and Gertrude Crayso the half sister, were the only heirs of Garfield Colbert, deceased, an as such, took the title to the lands in controversy in equal, undivid halves.

And it appearing to the court that the complainant, James Bran is the owner of an undivided one-half (½) interest in fee in and the said land above described, and that the defendants and cro complainants, L. A. Bell, William H. Harris and James A. Harr are the owners of the other undivided one-half (½) interest in a to the said land in controversy; and,

It appearing that the complainant is entitled in part to the relief prayed for to the extent of having the defendants' deeds declared clouds on his title to an undivided one-half interest, but to no more, and,

It appearing that the defendants, under their cross-bill are entitled to recover of and from the complainant the possession to and the title [fol. 560] in an undivided one-half (½) interest in and to said land.

It is, therefore, ordered, adjudged, considered and decreed that all deeds and papers titles under which defendants claim title be, and the same are, hereby declared clouds on complainant's undivided one-half (½) interest in and to said land, and, as such, reformed and removed to this extent only, and,

It is further ordered, adjudged, considered and decreed that the plaintiff is the owner in fee of an undivided one-half (½) interest in and to said eighty (80) acres of land; and that the defendants are jointly the owners in fee of the other one-half (½) undivided interest and, as such joint owners of an undivided one-half interest, it is hereby ordered, adjudged, considered and decreed that the cross-complainants, said L. A. Bell, William H. Harris and James A. Harris, have and recover of and from the complainant the possession to and title in one undivided one-half interest in and to the said lands.

Plaintiff excepts to all the above holding and judgment of the Court awarding defendants a one-half interest in the land; and defendants except to all the holding and judgment of the Court awarding plaintiff a one-half interest in the land.

And it further appearing to the court that the plaintiff, some time prior to the institution of this suit, entered into possession of the said land in controversy, and drilled wells thereon for oil and gas and discovered oil in paying quantities; and that the complainant placed, while in possession, valuable improvements, machinery, pipe lines, tanks and appliances of said land, and,

It appearing that the plaintiff has extracted considerable quantities [fol. 561] of oil from said land and appropriated the same to his own use, and sold and disposed of it, without accounting to defendants, or either of them, for any part or portion thereof, and,

It appearing that a reference to a master is proper and necessary in this case, for the purpose of taking proof and reporting to the court on the various matters hereinafter set forth, and,

It appearing that counsel for the parties have agreed that the court appoint W. S. Cochran, a member of the Muskogee bar, as special master, to take the evidence and make such report subject to the exceptions to be filed by the parties, or any of them, dissatisfied with the master's actions and findings,

It is, therefore, ordered that said W. S. Cochran, be, and is, hereby appointed special master and, upon taking an oath, is directed to proceed, after due notice to the counsel for the parties, to take proof and hear such evidence as the parties may offer, and report to this court within ninety (90) days his findings of fact on the following:

1st. What was the character of complainant's entry upon the land in controversy, and whether or not complainant entered on said land in controversy with notice of the claim of title of defendants.

2nd. Whether or not complainant began to drill said land for oil and explore and develop the same for mineral purposes with or without objection of defendants.

3rd. Whether or not complainant entered into possession of all of said lands and operated the same for oil purposes to the exclusion of defendants.

4th. How much oil complainant produced from said land from the date of his entry into possession down to, and including, the 31st day of July, 1911.

[fol. 562] 5th. How much oil complainant has sold from said land down to, and including, July 31, 1911.

6th. How much money, or other thing of value, plaintiff has obtained from the sale of oil produced by him from said land down to, and including, July 31, 1911.

7th. What was the market price for such crude oil produced at the times complainant sold the oil produced by him from said land?

8th. What machinery, appliances, piping, tankage, derricks and other improvements are on said land at the date of this decree?

9th. What is the value of said appliances, machinery, derricks, tankage, etc.; and what were their cost?

10th. What reasonably necessary expenses has complainant expended in the drilling of the wells and operating said land for oil and gas, exclusive of machinery, appliances, casing and other improvements of a permanent nature situated on said land, at the time this decree is entered?

11th. How many producing wells have been drilled by the complainant; and how many were producing oil up to July 31, 1911?

12th. What was the average daily production of oil obtained by complainant from said land during the maximum and minimum month?

13th. What was the market value of a customary and usual oil and gas mining lease on said land, including bonus, if any, and royalty interest, at the time complainant began to drill a well on said land for oil and gas?

14th. What was the actual total cost of operating the land, producing and marketing the oil, including all items of expenditures by complainant?

[fols. 563-596] The said Special Master is directed to reduce his findings to writing and serve one copy (1) on counsel for complainant and one (1) copy on counsel for defendants five (5) days before

ling his report in the office of the Clerk of this court; and the said Special Master is directed to attach to his report, and over his certificate that the same contains all the evidence, a transcript of all the testimony taken before him with all the evidence attached thereto nd made a part thereof.

The parties desiring to file exceptions to the Master's report will le them in the office of the Clerk within three (3) days after the eport of the Master has been filed.

Ralph E. Campbell, Judge.

[File endorsement omitted.]

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fol. 597] DEFENDANTS' HARRIS & HARRIS EXHIBIT NO. 13

No. 13686

Quitclaim Deed

Know all men by these presents: That James Brann in consideraon of the sum of a valuable consideration in hand paid the receipt f which is hereby acknowledged, do hereby grant, bargain, sell, coney and quitclaim unto James A. Harris, William H. Harris and . A. Bell the following described real property and premises situate Creek County, State of Oklahoma, to-wit: an undivided one half nterest in the North half of the Northeast quarter of section thirty 30) township eighteen (18) North, Range twelve (12) east, gether with all the improvements thereon and the appurtenances ereunto belonging.

To have and to hold the said described premises unto the said antees their heirs, and assigns forever.

Signed and delivered this 19th day of Feb 1912.

James Brann. (Seal.)

Notary's certificate to above deed omitted in printing.

ols. 598-601] STATE OF OKLAHOMA,
County of Creek:

This instrument was filed in my office for record on the 29 day of ov. A. D. 1912 at 11.30 o'clock A. M. and duly recorded in book 83 page 182.

H. H. Adams, Register of Deeds.

[fol. 602] QUAKER OIL & GAS CO. ET AL. EXHIBIT NO. 1

No. 13085

George C. Butte et ux.

to

A. B. Reese

Oil and Gas Lease

This agreement, made and entered into this 23rd day of August, A. D. 1906, by and between George C. Butte and Bertha L. Butte, his wife, of Muskogee, Creek Nation, Indian Territory, parties of the first part, and A. B. Reese, of Independence, Kansas, party of the second part,

Witnesseth: That the said parties of the first part, for and in consideration of the covenants and agreements hereinafter inserted, and the sum of Sixteen Hundred Dollars, in hand paid and hereby acknowledged, have demised and let unto the party of the second part, his heirs and assigns, for the purpose and exclusive right of drilling and operating for and procuring oil and gas, all of the following described property, to-wit: Lot Two (2) and N. E. ¼ of the N. E. ¼ and N. W. ¼ of N. W. ¼ of S. E. ¼ of N. E. ¼, all in Section 31, Township 17 North, Range 12 East; N. W. ¼ of S. W. ¼ of Section 17, and E. ½ of S. E. ¼ of Section 20, and N. W. ¼ of S. W. ¼ of S. E. ¼ of S. E. ¼ of Section 20, all in Township 18 North, Range 12 East, containing 160 acres, more or less, in the Creek Nation of the Indian Territory, to any extent the said party of the second part may deem advisable, together with the right to lay, erect and maintain all necessary pipe and pipe lines, tanks, structures, rods, cables, [fol. 603] and all other fixtures and machinery used in drilling form pumping, preserving, storing and transporting the product on said premises. The party of the second part shall further have the right of using sufficient water from the premises for operating purposes, and if necessary the right to drill for it on said premises.

The party of the second part to have and to hold the premises for and during a term of ten (10) years from date hereof, and as much longer as oil or gas is found or produced in paying quantities thereon.

In consideration of the said grant and demise, the party of the second part agrees to deliver to the parties of the first part, one-eighth of the oil realized from the premises, in tanks at the well without cost, or pay the selling price at the well therefor in cash, at the option of the parties of the first part. If gas is found in any well or wells on said premises, the parties of the first part are to have upon demand sufficient gas for domestic purposes, free of charge; the remainder, with all the gas from the oil wells, to go to the party of the second part. If the party of the second part shall market any gas from any well producing gas then the parties of the first part shall receive

herefor at the rate of one hundred and fifty dollars per well in a l-
rance per annum for all gas so marketed or sold.

The party of the second part agrees to locate wells so as not to nterfere any more than is reasonably necessary with the houses on he premises.

fol. 604] All payments of said rentals to be made at the First National Bank, of Muskogee, I. T., to the credit of the parties of the irst part.

The party of the second part shall have the right to remove any nd all fixtures placed upon said premises.

The party of the second part shall have the right to discharge any ncumbrance upon said premises and shall have a lien thereon for he amount so paid, together with all costs and expenses incurred.

It is hereby further agreed that the party of the second part shall ave the right at any time after two years to surrender and terminate his grant and demise by serving written notice upon the parties of he first part of such intention, after which all payments or liabilities o accrue shall cease and determine.

Party of the second part agrees to complete one well on the land n Township 18 North, Range 12 East, within three months and ne well on the land located in Township 17 North, Range 12 East n six months, or pay a rental of $80.00 per year thereafter in ad-ance for each of the said two portions of land until a well is drilled hereon producing oil or gas in paying quantity.

All rights and obligations under this lease shall extend to and be inding upon the heirs, executors or administrators, successors and ssigns of the parties hereto.

In witness whereof, the parties have hereunto set their hands and eals the day and year above written.

George C. Butte. (Seal.) Bertha L. Butte. (Seal.) A. B. Reese. (Seal.) O. M. Irelan, Deputy Clerk & ex-Officio Recorder.

fols. 605-647] Notary's certificate to above paper omitted in print-ng.

(Seal) Western District, Ind. Ter.
My commission expires Dec. 28, 1909.

Filed for record Aug. 30, 1906, at 1 P. M.
O. M. Irelan, Deputy Clerk & ex-Officio Recorder.

[fol. 648] QUAKER EXHIB. 9

IN THE DISTRICT COURT OF CREEK COUNTY, STATE OF OKLAHOMA

[Title omitted]

NOTICE TO TAKE DEPOSITIONS

Said Plaintiffs and their Attorneys, A. A. Hatch, Esq., Jess W. Watts, Esq., W. T. Hunt, Esq., Turner & Turner, Didney & Gidney, J. E. Smith, Porter & Porter, Wallace & Stephens, will take notice that on Wednesday 18th day of June, 1919, defendants will take the depositions of sundry witnesses, to be used in evidence in the above entitled cause, beginning at nine o'clock on the morning of 18th day of June, 1919, at the office of Robert F. Blair, Esq., and will be continued from day to day until the same has been completed.

Also, that on Thursday, 19th day of June, 1919, at the office of Lathim & Lesley, in the Barnes Building, in the city of Muskogee, Oklahoma, between the hours of eight o'clock in the morning and six o'clock in the afternoon, defendants will take the depositions of sundry witnesses to be likewise used in this case, and will continue the same from time to time and from day to day, until same has been completed.

Robert F. Blair, Geo. S. Ramsey, Attorneys for Defendants.

Service of the above notice is hereby accepted and acknowledged to have been made on this 17th day of June, 1919.

W. T. Hunt, One of Attorneys for Plaintiffs.

[fol. 649] Deposition of witness taken to be used in an action pending in the District Court of Creek County, State of Oklahoma, wherein Isom Grayson et al. are plaintiffs and James A. Harris et al. are defendants, in pursuance of the notice hereto attached and at the time and place therein stated, the said plaintiffs appearing by Jesse W. Watts, Esq., and S. E. Gidney, Esq., of counsel for the plaintiffs, and the said defendants appearing by their attorney, R. F. Blair, Esq.

And thereupon the said defendants produced the following witness, to-wit:

Filed June 23, 1919

GEORGE C. BUTTE, of lawful age, being first duly sworn, deposeth and saith:

Direct examination by Mr. Blair:

Q. State your name, your place of residence, present place of residence, and your occupation?

A. George C. Butte, Austin, Texas; Professor of Law in the University of Texas.

Q. Are you the same George C. Butte that lived and practiced law at one time in Muskogee, and whose name is connected with the allotments as a purchaser of the allotments of Nancy Colbert and Garfield Colbert?

A. I am.

Q. I show you now an abstract of title of the Nancy Colbert allotment, and from that I wish you would refresh your memory and state when and of whom you bought the Nancy Colbert allotment?

A. I bought the Nancy Colbert allotment of Willie E. Toomer.

Q. When, Mr. Butte?

A. In July, 1906.

[fol. 650] Q. What, if anything, did you do with reference to an examination of the lands contemporaneously with your purchase of it?

Mr. Watts: We object to that for the reason that it is leading. Let the witness state what he did and when he did it.

A. I was on a portion of this allotment before I bought it.

Q. Just prior to or just afterwards?

A. I was also on the lands just afterwards, but then I understand your question has reference to the transaction of purchase.

Q. Yes, the transaction of your purchase?

A. Yes sir.

Q. To whom did you make an oil lease on that land, and if so, when?

A. I made an oil lease on the land about a month after I purchased the land.

Q. That would be in August, 1906?

A. Yes sir; that lease was made to A. B. Reese, then of Independence, Kansas; I don't know what his address is now.

Q. What, if anything, did you do toward putting him into possession of the land with respect to his drilling for oil or developing it for oil?

A. Well, I made him the lease and authorized him to go and take possession. I didn't take him personally over there and put him on the land; I didn't think that was necessary. He paid me a consideration for the lease and afterwards paid rentals under the lease, and actually went on the land and commenced operations.

Q. When did he pay you the first rentals; at the time he took [fol. 651] the lease?

A. Well, there was a bonus paid at the time the lease was signed and delivered, and rentals paid afterwards. I may say in this connection these transactions all took place now thirteen years ago and there are some details about which I will not be categorical; I cannot say as to the exact date when the rental was paid.

Q. That we understand. I am just asking you to state as nearly as you can, using the abstract of title to refresh your memory from, and give us your best judgment based upon that and your recollection of the transaction?

A. Well, I made the lease in August, 1906, I can testify that from

memory without consulting the abstract, because I know it was within a month or so after I bought the land, and received a cash payment, the amount of which I do not recall, and afterwards received various rental payments under that contract. Also later on regular royalty payments when production was found.

Q. Now I show you the abstract of the allotment of Garfield Colbert. Were you in any way interested in the deed or the land conveyed by the deed made by Jim Colbert and his wife to Daniel A. Dabney on July 21, 1906, and by the same grantees to James A. Braun on July 21, 1906, the two deeds covering the Garfield Colbert allotment?

A. Yes sir, I was interested with Mr. Dabney.

Q. What did you do, you and Mr. Dabney?

A. Just a moment, please sir. Mr. Blair this abstract seems to show that the deed was made only to Mr. Dabney; my recollection is that Mr. Dabney and I were joint grantees. I think this abstract is in error and the abstract should show that that deed of Jim Colbert, [fol. 652] dated July 21, 1906, was made to Daniel A. Dabney and myself.

Q. I think so too.

Mr. Gidney: We move that the answer of the witness be stricken for the reason that the deed would be the best evidence.

A. Well, I can state as a fact that I was the owner of a half interest in that land with Mr. Dabney.

Q. What was done with reference to making an oil lease or developing that property for oil, and when was that done?

A. The Garfield Colbert allotment was conveyed in two separate eighty acre tracts, one eighty directly to James Braun and the other eighty to Mr. Dabney and myself. These deeds were made in July, 1906. Shortly afterwards, I do not recall the exact date, my recollection is during the same year, however, Mr. Dabney and I made an oil lease to Mr. Brann covering the eighty which we owned in fee. The abstract will show the date of the lease.

Q. What did you do with reference to delivering possession to him under your oil lease for the purpose of developing that property?

A. We placed Mr. Brann in possession of our eighty and he immediately afterwards commenced operations on the land.

Mr. Gidney: We object as calling for a conclusion, rather than a statement of what was done, and ask that the answer be stricken.

Q. I show you now a petition in case No. 1049 on the docket of the District Court of Creek County styled George Butte and Daniel A. [fol. 653] Dabney, plaintiffs, against Oklahoma Land Company, a corporation, and L. A. Bell, defendants, and ask you what, if anything, you had to do with preparing and filing that petition in court?

Mr. Watts: We object as incompetent, irrelevant and immaterial as far as these plaintiffs are concerned.

A. I was one of the plaintiffs and attorney for the plaintiffs in this action, prepared this petition and filed it in the District Court at

Sapulpa. This was in October, 1908. The action was taken largely at the instance and request——

Mr. Gidney: We object as being a voluntary answer.

Q. I will ask it. At whose instance was this action brought?

A. At the instance of the lessee. We wanted to protect Mr. Brann against these clouds, as we believed they were, that had arisen against his title.

Q. Well Mr. Butte, after you bought this land and after you had made these leases to these lessees and put them in possession, as you have testified, what, if anything, did you do toward removing other clouds? Did you take any quit claim deeds?

A. Yes sir, various ones. Some of these defendants in the suit you refer to made settlements.

Q. The Oklahoma Land Company?

A. Yes sir, and one J. T. Haizlip, and some others, I don't now recall, Mr. Blair. The transaction has been thirteen years ago, and I have been leading quite a different life from business life, and have not tried to keep the details in mind.

Q. But L. A. Bell was one of the ones you could not settle with, [fol. 654] and you brought the suit against him. What did you do with that suit?

A. At that time we settled with all of the adverse claimants except L. A. Bell. We tried to compromise with him, but he wouldn't settle, so we abandoned these various suits, there was more than the one you refer to.

Q. There were two others, I will show you.

A. We abandoned these suits in the District Court at Sapulpa, and filed a suit in the Federal Court at Muskogee against L. A. Bell and those associated with him in the title.

Q. That is the case styled Brann against Bell in the Federal Court?

A. I don't know the style of it.

Q. I show you the position now, Mr. Butte, in two other cases referred to, being No. 1050 and No. 1051, respectively, in the District Court of Creek County, and will ask you if what you said in regard to No. 1049 is substantially true as to these two numbers, without going into details? These involve other pieces of land, but part of these two allotments?

A. Yes sir, the same facts apply. I was one of the plaintiffs and also attorney for the plaintiffs in these actions.

Q. During the time immediately subsequent to the making of these oil and gas leases on these lands who was in possession of these lands, and what kind of possession did they have?

A. Well, Mr. Brann was actually operating the 160 of the allotment of Garfield Colbert, and A. B. Reese and his associates were operating on the Nancy Colbert allotment. That is not on all portions of it, it is in separate tracts.

Q. Was any complaint made to you that their possession was at any time distur-ed while they were occupying it?

A. No sir.

[fol. 655] Q. The clouds which you removed by settlement, did any of those claimants ever undertake to or actually occupy any part of the land?

Mr. Watts: We object to that because they are not party plaintiffs in this case.

Mr. Blair: I guess that is right, I will withdraw the question.

Mr. Watts: I also move to stroke the question and answer as to what the lessees did or said with reference as to whether or not the title had been disturbed, as not binding upon these plaintiffs.

Q. Mr. Butte, after the case of Brann against Bell in the Federal Court was finally determined, what did you gentlemen do with Bell and Harris Brothers toward settling the title of the Nancy Colbert allotment based upon the judgment and determination of the Federal Court in the Garfield Colbert case?

A. We divided our titles half and half, fifty-fifty.

Q. That was done about September, 1912?

A. Yes sir, 1912, I recollect it now.

Q. You and your associates were and are still having and receiving, or were receiving your proportion of the oil on this Nancy Colbert allotment up to the bringing of this suit, were you not?

A. Yes sir, and the only reason we are not receiving it now because the Pipe Line Company declines to pay us while the suit is pending.

Q. While the matter is in litigation?

A. Yes sir.

[fol. 656] Cross-examination by Mr. Watts:

Q. Mr. Butte, you state as to the Nancy Colbert allotment that you continued to receive—just strike that. I believe you state that you bought the Nancy Colbert allotment from Willie E. Toomer in July, 1906?

A. Yes sir.

Q. And that you subsequently in August, 1906, made an oil and gas lease to a man named A. B. Reese of Independence, Kansas?

A. Yes sir.

Q. To whom did you sell that allotment?

A. Well, I conveyed a half interest in it to John F. Hayden, and a quafter interest in it to D. A. Dabney. We three were generally associated in the buying of tracts of land.

Q. That was in August, 1906?

A. I think so, yes sir. It left me an undivided one-fourth interest in the Nancy Colbert allotment.

Q. Do you claim to own that one-fourth interest at this time?

A. I do, yes sir. But in this way, I conveyed that to George Miller in trust, and after his death, as his heir, I succeeded to it, and I am the present owner of it under his will.

Q. And received the royalties up until the time of the filing of this suit?

A. Yes sir.

Q. You are then an interested party in this suit with the defendants?

A. Yes sir; that is I have the title to that much royalty interest.

[fol. 657] Q. Have you been made a party defendant or plaintiff in this case?

A. Not to my knowledge.

Q. How long since you were first advised of the pendency of this suit?

A. About a year ago, I think, when I wrote the Pipe Line Company for the reason of not getting any royalties, and they explained the fact the suit was pending.

Q. Have you taken any steps to be made a party?

A. No sir.

Q. Is it your purpose to ask the court to be made a party to this suit?

A. No sir. In fact I know nothing about the suit; I have learned more of it since I came up on this trip for the purpose of having this deposition taken.

Q. Now you were not present in July, 1906, when Willie E. Toomer took an instrument to this land from Jim Colbert and Missouri Colbert?

A. No sir, I was not.

Q. Were you interested in that transaction?

A. No sir. I subsequently purchased it from Willie Toomer.

Q. The entire allotment?

A. Yes, sir. I purchased it from her father, Colonel Robert Toomer, who was acting for her.

Q. Do you know what Willie E. Toomer did with reference to taking possession of the land under his deed from Jim Colbert and Missouri Colbert?

A. No sir, I do not.

Q. What did you do toward taking possession of your deed?

A. I inspected the land before and was on the land after I took [fol. 658] the deed; placed these lessees in possession.

Q. Was the land in cultivation?

A. Part of it was, yes sir.

Q. How much?

A. Well, that is hard to say, probably 15 or 20 acres.

Q. Did you receive any agricultural rentals therefrom?

A. I don't recall whether I did or not.

Q. As a matter of fact, Mr. Butte, about all you did was to go over there and take a look over it?

A. Yes sir.

Q. You didn't go on to the land?

A. Yes sir, I went on the land.

Q. How did you go?

A. Drove out, as I recall it.

Q. Buggy?

A. Yes sir, that is my present recollection.

Q. Who was cultivating the land at that time?

A. I don't recall.

Q. Are you sure you received some of the agricultural rentals?

A. No sir, I am not. It has been so long ago I would not possibly remember that.

Q. Do you know who did receive them?

A. I don't; if anybody had received them I should have.

Q. Then with reference to placing your lessees in possession, A. B. Reese, what did you do except sign the papers?

A. I don't recollect.

Q. You didn't go up and say, Mr. Reese, here is the possession of the premises?

A. I don't recall whether Reese and I went on the land or not; I know I did in the case of Mr. Brann, but I don't recollect whether I [fol. 659] did in the case of Reese or not.

Q. That is on the Garfield allotment?

A. Yes sir.

Q. What did you mean when you stated you placed Mr. Reese in possession?

A. I meant to say I gave him this lease and accepted his money for it, and won't say positive whether I was on the land with him or not, or what steps I did take to place him in possession.

Q. Have you been on the land since then?

A. Yes sir.

Q. Who was in possession then?

A. That was hardly a year after I made this lease, and I couldn't recall.

Q. Do you know who was in possession?

A. No sir; that is I didn't know who was on the land; I considered myself in possession. As a matter of fact there are four different tracts in that Nancy Colbert allotment, and there was only one tract under any sort of fence, and my testimony was in relation to the agricultural part of the land.

Q. You didn't take any possession of any other part except the agricultural part?

A. I don't know what you mean by taking possession. I was on the land.

Q. On each and every tract?

A. Yes sir. It was just lying open land, unfenced and without improvements.

Q. Now you have never received any possession from any of the plaintiffs in this case?

[fol. 660] A. Well, I claim my title through——

Q. Just a minute, now answer the question?

A. None except what I got from Harris Brothers, from Micey Keys, and Jim Tobler, two of the plaintiffs.

Q. Do you know who developed the Nancy Colbert allotment of oil?

A. A. B. Reese and his associate, Mr. Hull.

Q. Are they the present lessees?

A. No, I think the present lessees are the Quaker Oil and Gas Company.

Mr. Blair: They have recently assigned to the Ohio Cities Oil Company.

Q. Referring to the Garfield Colbert allotment, you say you were interested in the deed from Jim Colbert and Missouri Colbert to Daniel A. Dabney?

A. Yes sir.

Q. What interest?

A. Half interest.

Q. Your name does not appear in that deed from the record?

A. I think it does in fact.

Q. You were interested though, any way?

A. Yes sir, a half interest. My name was in that deed, I am sure.

Q. Were you interested in the deed from Jim Colbert and Missouri Colbert to James Brann?

A. No sir.

Q. You were only interested in the north half of the allotment, in the Dabney deed?

A. Yes sir.

Q. What did you do with your interest in that allotment?

[fol. 661] A. I conveyed half of it to John F. Hayden shortly after the original transaction.

Q. Can you take the abstract and give me the date of it?

A. But it was immediately after the original transaction in 1906, as I recall now.

Q. I will ask you if it isn't a matter of fact that you didn't dispose of any part of your interest in the North half of the Northeast quarter of Section 30, Township 18 North, Range 12 East, until 1909, at which time you sold to James Brann?

A. Yes sir, with reference to the fee, and sold our royalty interest. I personally haven't any interest in the land; I transferred the small royalty interest to my wife about two or three years ago. I personally haven't any interest in it.

Q. Is it the purpose of your wife, if you know, to be made a party plaintiff or defendant to this suit?

A. No sir.

Q. So far as you know, Mr. Butte——strike that. I understand you to say then if the plaintiffs are interested in this suit save and except Micey Keys and Jim Tobler, that your possession has been in common with them? Save and except your possession under the Jim Colbert deed; the Micey Keys deed and the Jim Tobler deed; in other words your possession has been in common with them?

Mr. Blair: We object to that.

A. I went into possession under my deed and title from Jim and Missouri Colbert.

Q. And none other?

A. And continued in possession under that title until we acquired [fol. 662] such additional rights as we got under the settlement that was made with Harris Brothers.

Q. You have no information as to whether or not these plantiffs

have ever claimed any interest in this land save and except throug this suit?

A. No sir, I don't know any of them.

Q. You don't know any of them at all?

A. No sir.

Q. You said that you went into possession under your deeds, wha did you do, what exposition, if any, of possession did you make What did you do?

A. I went on the land.

Q. Who told you to go on the land?

A. Nobody; told myself to go after I got these deeds.

Q. As a matter of fact, Mr. Butte, didn't you all assume that th deed from Jim Colbert and Missouri Colbert conveyed the land t you parties under that deed?

Mr. Blair: You mean conveyed all the title. Did you think yo had all the title to the land by reason of the Jim and Missouri Co bert deeds?

A. At the time we took those deeds, yes sir.

Q. You didn't consider then that Chlora Grayson, the non-citize grand-mother of Garfield and Nancy, had any interest in the land

A. At that time, it was 13 years ago, it was a very much moote question as to how titles descended. In my opinion we had th whole title at that time.

Q. Under the Jim Colbert deed?

A. Yes sir, that was my opinion at that time.

[fol. 663] Q. Why then did you claim any title or possessio under Chlora Grayson deed?

A. That was two or three years later.

Q. Why did you get that deed?

A. As a matter of compromise, yes sir.

Q. Got it in order to get rid of her.

A. Yes sir, as a matter of compromise.

Mr. Watts: That is all.

Cross-examination by Mr. Gidney:

Q. You say you went on the land, Mr. Butte?

A. Yes sir.

Q. What did you do?

A. You mean the first time I went on the land? I was on th land before I bought it and after I bought it.

Q. Did you do anything additional on the land after you bough it than before?

A. I don't understand your question.

Q. You said you went on the land before you bought it and yo went on it after you bought it?

A. Yes sir, I went on it first to inspect it as a prospective pu chaser, and went on it afterwards as a purchaser.

Q. Did you live on it?

A. No sir.

Q. Was any of it in cultivation?
A. Yes sir.
Q. Did you cultivate it?
A. No sir, I didn't cultivate it. There was a farmer on the land, but whether I collected any rent from him I don't recall.
[fol. 664] Q. Did you put him on there or find him on there?
A. I found him on there.
Q. Did you make any contract with him?
A. I don't recall.
Q. Do you know his name?
A. I do not. He was there only that one season; he gathered his crop that fall.
Q. Then when you went on the land you simply looked over it, or walked over it?
A. Well, I went on it with Mr. Reese once, and then with Mr. Brann.
Q. Just to show it to them?
A. No, it was after I made the lease to them.
Q. What did you go on there for?
A. To show them where the property was, and see the condition of the property.
Q. When was that?
A. In 1906. I was on the Gardield Colbert allotment in 1907 after Mr. Brann had begun operations on the land.
Q. Now these men that you conveyed these interests to as to the fee, where did they live?
A. Mr. Dabney lived at Independence, Kansas, at that time, and Mr. Hayden lived, I believe, at Claremore or Tulsa, I don't recall which.
Q. Whatever looking after the real estate was done by you and not by them?
A. No sir, we acted in common. We had our interests in common. I don't know what they did with reference to the land, or the possession of the land afterwards.
[fol. 665] Q. You never improved the real estate?
A. Except by the oil operations.
Q. That was all that was done to the estate, oil development?
A. Yes sir.

Mr. Gidney: That is all.

Redirect examination by Mr. Blair:

Q. Mr. Butte, none of these plaintiffs ever asserted any right or possession to this property, any of it, or claim any title in it, did they, to you, after you got your deed in 1906?
A. They did not to my knowledge.
Q. Well, I mean did they make any demand on you for division of the oil or possession of the land?
A. No sir.

Q. The only trouble that you ever had was, the only demand ever made upon you was the demand made by L. A. Bell and James A. Harris and William H. Harris, which you settled after the suit of Brann against Bell was determined in the Federal Court, as I understand it?

A. Yes sir.

Q. And you each took half of the land, and that was done by interchange of deeds?

A. Yes sir.

Mr. Blair: I guess that is all.

Recross-examination by Mr. Watts:

Q. You did that on the theory that you had acquired the full title [fol. 666] from the Jim Colbert and Missouri Colbert deed?

A. We did it to effect a compromise and quiet our title.

Q. I mean the only interest you admit though was by reason of the Jim Colbert deed?

A. I don't believe I understand you, Mr. Watts. You see we had gone into possession and actually began operations under the Jim Colbert title.

Mr. Blair: Believing you had the whole title?

A. Yes sir, believing we had the fee, and then there was good grounds, in the opinion of a great many lawyers, in believing we had the entire fee title; but several claimants came in and we settled with them one after another in the fall and summer of 1907.

Q. You did that to get rid of them?

A. Yes sir.

Q. You didn't recognize they had any title?

A. No sir.

Q. Then in compromising the suit in the Federal Court you divided fifty-fifty all such interest as had been acquired through the Jim Colbert deed?

A. That is, we gave Harris half of our title and he gave us half of his.

Q. That is, such title as you acquired under the Jim Colbert deed?

A. Yes sir. Of course, the settlement in the Nancy Colbert allotment was made after the court here had adjudicated in the case of Brann against Bell involving the Garfield Colbert allotment, that the two claimants owned a half interest each, and rather than just litigate the question we decided it would be best to compromise.

[fol. 667] Q. It was quite valuable for oil?

A. Yes sir, it was at that time. There was no production on the land at the time.

Q. But as to both allotments you only settled as to such interest as you had obtained under the Jim Colbert deed; did that same condition apply to the Gardield Colbert allotment?

A. Well, the Gardield Colbert allotment was in litigation.

Q. Well, as to the Nancy?

A. The Nancy was not in litigation except those suits I had brought at Sapulpa.

Q. I understand, but you stated in settling the Gardield Colbert allotment you did that on the title you acquired on the Jim Colbert deed; is the same condition true as to the Nancy Colbert allotment?

A. I don't understand you, Mr. Watts.

Q. (Question read by the stenographer.)

A. We claimed the entire fee, both in the Gardield Colbert and the Nancy Colbert allotments, under our deeds from Jim Colbert and his wife.

Q. And none other?

A. And the settlements which were subsequently made were made by reason of and for the purpose of compromise.

Q. You didn't think these other persons had any interest, you just settled with them to get rid of them, is that true?

A. Well, doesn't my statement cover that?

Mr. Watts: I think so.

(Witness excused.)

It is hereby agreed that the signature of the witness, George C. Butte, to this deposition be waived.

[fol. 668] Notary's certificate omitted in printing.

[File endorsement omitted.]

[fol. 669] QUAKER OIL AND GAS CO. ET AL. EXHIBIT No. 10

No. 12687

General Warranty Deed

This indenture, Made and entered into this 10th day of July, one thousand nine hundred and six, by and between Jim Colbert and Missouri Colbert wife Jim Colbert, of Muskogee, parties of the first part, and Willie E. Toomer, of Muskogee, I. T. party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of One Thousand dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, convey and confirm unto said party of the second part the following described real estate and premises, situate in the Creek Nation, and within the limits of the Indian Territory, to wit:

Lot 2 and N. E. ¼ of N. E. ¼ and N. W. ¼ of N. W. ¼ of S. E. ¼ of N. W. ¼ all in Sec. 31, Twp. 17 N., R 12 East, also N. W. ¼ of S. W. Sec. 17 & E. ½ of S. E. ¼ of S. E. ¼ Sec. 20, & E. ½ of S. W. ¼ of S. E. ¼ of S. E. ¼ Sec. 20, and N. W. ¼ of S. W. ¼ of S. E. ¼ of S. E. ¼ Sec. 20, all in Twp. 18 N. Range 12 East, containing one hundred sixty acres, more or less, together with all

the improvements thereon, and appurtenances and immunities thereunto belonging or in anywise appertaining, and warrant the title to the same.

And I, Missouri Colbert, wife of the said Jim Colbert, for and in consideration of the said sum of money, do hereby release and relinquish unto the said party of the second part all my right of dower and homestead in and to said lands.

To have and to hold the said lands unto the said party of the sec- [fol. 670] ond part, her heirs, executors, administrators and assigns, forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

Witnesses as to Jim (his X mark) Colbert. (Seal.) Peter V. Ziegler, Jr., Edward C. Griesel; as to Missouri (her X mark) Colbert. (Seal.) Peter V. Ziegler, Jr., Edward C. Griesel.

Notary's certificate to above paper omitted in printing.

[fol. 671] Blank endorsements omitted in printing.

Filed for record on the 11 day of Jul. 1906, at 8 o'clock A. M. at Sapulpa, I. T.

O. M. Irelan, Deputy Clerk and ex-Officio Recorder.

[fol. 672] QUAKER OIL AND GAS CO. ET AL. EXHIBIT No. 11

No. 12792

General Warranty Deed

This indenture, made and entered into this 17th day of July, one thousand nine hundred and six, by and between Willie E. Toomer an unmarried person of lawful age, of Muskogee, I. T., party of the first part, and George C. Butte, of Muskogee, I. T., party of the second part, witnesseth: That the said part of the first part, for and in consideration of the sum of sixteen hundred ($1,600.000) dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, convey and confirm unto said part of the second part the following described real estate and premises, situate in the Creek Nation, and within the limits of the Indian Territory, to-wit:

Lot 2 and N. E. ¼ of N. E. ¼ and the N. W. ¼ of N. W. ¼ of S. E. ¼ of N. W. ¼ Sec. 31 Twp. 17 N. R. 12 East, and the N. W. ¼ of S. W. ¼ of Sec. 17 and E. ½ of S. E. ¼ of S. E. ¼ and the N. W. ¼ of S. E. ¼ of S. E. ¼ and the E ½ of S. W. ¼ of S. E. ¼ of S. E. ¼ and the N. W. ¼ of the S. E. ¼ of S. E. ¼ Sec. 20 Twp. 18 N. R. 12 East, in the Creek Nation Indian Territory, together

with all the improvements thereon, and the appurtenances and immunities thereunto belonging of in anywise appertaining, and warrant the title to the same.

As to Willie E. Toomer (Seal).

Notary's certificate omitted in printing.

[fol. 673] Blank endorsement omitted in printing.

[fols. 674–693] Filed for record on the 23 day of Jul. 1906 at 8 o'clock A. M. at Sapulpa I. T.

O. M. Irelan, Deputy Clerk and ex-Officio Recorder.

[fol. 694] QUAKER OIL & GAS CO. ET AL. EXHIBIT NO. 19

No. 14403

Quit Claim Deed

This Indenture, made this 12th day of September, 1912, between Edith M. Hayden and John F. Hayden, her husband, Daniel A. Dabney and Alice A. Dabney, his wife, and George C. Butte and Bertha L. Butte, his wife, parties of the first part and William H. Harris, James A. Harris, and L. A. Bell, of Wagoner, Oklahoma, parties of the second part.

Witnesseth, That the parties of the first part for and in consideration of the sum of Ten ($10.00) and no/100 Dollars, to them duly paid, the receipt whereof is hereby acknowledged have by these presents Remised, Released and Quit Claim and do for themselves, their heirs, executors, administrators remise, release, and forever quit claim unto the said parties of the second part, and to their heirs and assigns, forever, all their right, title, interest, estate, claim and demand both at law and in equity, of in and to all the following described land situated in the County of Creek, and State of Oklahoma, to-wit:

An undivided one half (½) Interest in and to Lot Two (2) and the northeast Quarter (¼) of the Northeast Quarter (¼) and the Northwest Quarter (¼) of the Northwest Quarter (¼) of the southeast Quarter (¼) of the Northeast Quarter (¼) all in Section Thirty one (31) Township Seventeen (17) North, Range Twelve (12) East; And the Northwest Quarter (¼) of the Southwest Quarter (¼) of Section Seventeen (17) and the East half (½) of the South [fol. 695] east Quarter (¼) of the Southeast Quarter (¼) and the Northwest Quarter (¼) of the Southeast Quarter (¼) of the Southeast Quarter (¼), and the East Half (½) of the Southwest Quarter (¼) of the Southeast Quarter (¼) of the Southeast Quarter (¼) and the Northwest Quarter (¼) of the Southwest Quarter (¼) of the Southeast Quarter (¼) of Southeast Quarter (¼) all in Section

Twenty (20) Township Eighteen (18) North, Range Twelve (12) East, said land being the allotment of Nancy Colbert,

To have and to hold the same, together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining to the above described premises forever, unto the said second part, their heirs and assigns, so that neither of the said first part or any person in their name and behalf, shall or will hereafter claim or demand any right or title to the said premises or any part thereof; but they and every one of them, shall by these presents be excluded and forever barred.

In witness whereof, The said parties of the first part have hereunto set their hands and seals, the day and year first above written. Daniel A. Dabney. (Seal.) Alice A. Dabney. (Seal.) Jno. F. Hayden. (Seal.) Edith M. Hayden. Witnesses: —— ——. Bertha L. Butte. S. H. Lattimore, Atty-. in Fact. S. H. Lattimore, Atty. in Fact.

Notary's certificate omitted in printing.

[fol. 696] State of Oklahoma,
Creek County, ss:

This instrument was filed in my office for record on the 24 day of Dec. A. D. 1912, at 8 o'clock A. M., and duly recorded in Book 86 on Page 167.

H. H. Adams, Register of Deeds. J. M. Hopper.

[fol. 697-n] Notary's certificates omitted in printing.

[fols. 0 & 1] In Supreme Court of Oklahoma

Return to Writ

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Oklahoma, in the City of Oklahoma City, Oklahoma, this the 27th day of September, A. D., 1923.

Wm. M. Franklin, Clerk Supreme Court of Oklahoma, By Reuel Haskell, Jr., Assistant. (Seal of the Supreme Court of the State of Oklahoma.)

[fols. 1a & 2a] Citation—Filed Sept 25, 1923; omitted in printing

[fol. 3a] SERVICES OF CITATION

Sept. 20, 1923.

Service acknowledged for James A. Harris and James H. Kennedy & William H. Harris on this day.

Robt. F. Blair, Geo. S. Ramsey, Attys.

Sept. 20, 1923.

Service acknowledged for Ohio Cities Gas Co. this Sept. 20, 1923.
Alvin Richards, T. Earl Shaffer, By Geo. S. Ramsey, Attys.

Sept. 20, 1923.

Service acknowledged for Jim Colbert.

R. E. Jackson, his Attorney.

[fol. 4a] We, the attorneys of record for James A. Harris, William H. Harris and James H. Kennedy, named in the within citation, hereby acknowledge due service upon them of the within citation and enter their appearance in the Supreme Court of the United States in the cause mentioned and described in said citation, this 20th day of September, 1923.

Robt. F. Blair, Geo. S. Ramsey, Counsel for James A. Harris, William H. Harris, and James H. Kennedy, Defendants in Error in United States Supreme Court.

We, the attorneys of record for James A. Brann, named in the within citation, hereby acknowledge due service upon him of the within citation and enter his appearance in the Supreme Court of the United States in the cause mentioned and described in said citation this 24th day of September, 1923.

A. A. Davidson, Counsel for James A. Brann.

[File endorsement omitted.]

[fol. 5a] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

[fol. 6a] PETITION FOR WRIT OF ERROR—Filed Sept.18, 1923

To the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, and the Associate Justices of said Court:

Now come Isom Grayson, Micey Keys, Paulina Carolina, Alice Carolina, Bertha Grayson, Gertie Carolina, Polly Grayson, Louisa Williams, Dock Grayson, a minor, Zack Grayson, a minor, by Mont Carolina, the next friend of said minors, Della Hutton, Sam Haynes,

Alice Hunter, Rose Haynes, Rayford Hutton, Dam Stidham, Letha Stehham, Hattie Givens, George Harrison, Jennie Boyce, a minor, Clarence Boyce, a minor, Lucy Boyce, a minor, Hattie Boyce, a minor, Beatrice Boyce, a minor, by George Harrison, the next friend of said minors; Joe McIntosh, Wiley McIntosh, John McIntosh, George McIntosh, Rebecca McIntosh, Elzora Fields, Mammie Davis, Willie Smith, Johanna Smith, Henry Smith, George Smith, Prince Lewis, Eddie Lewis, Sarah Lewis McSwain, Jesse Lewis, Elmore Lewis, a minor, Robert Lewis, a minor, William Lewis, Jr., a minor, Lennie Lewis, a minor, by R. J. Dixon, the next friend of said minors, Mary Manuel, Roy McIntosh, Rozanna McIntosh, Berry Friday, Louis Friday, Jack Friday, Bennie Friday, Billy Friday, Katie Harrison, Julia Durant, Edward Friday, Beecher Watley, a minor, Jack Watley, a minor, Beatrice Watley, a minor, Myrtle Wayley, a minor, by Jim Watley the next friend of said minors, Dorthey Grayson, Billy Grayson, Leona Grayson, Katie Grayson, Lucy Grayson, Janey Grayson, Cooper Grayson, a minor, by Bille Grayson his next friend, Elsie Edwards, Sam Tobler, Dick Tobler, Rexanna Sneed, Sophia Smith, Sandy Tobler, Lidia Connor, Ben Tobler, Arizona Tobler, Bula Tobler, a minor, Lula Tobler, a minor, Pleas Tobler, a minor, Ida Tobler, a minor, by — Adams, the next friend of said minors; Mirah Jenkins, Pauline Tobler, Aaron Tobler, Alice McNack, Sandy Grayson, Dick Thursday, Peter Hawkins, Joe [fol. 7a] Hawkins, Sambo Hawkins, Dave Hawkins, Robert Hawkins, Mack Hawkins, Tommy White, Rachie White, Jessie Casey, Galula Hawkins, a minor, by her next friend P. J. Shimm.., Patsey Harrison, Rose Corbray, Mary Corbray, Nettie Perry, Esther Lee Parry, Joe Stephens, Morris Stephens, Joe Grayson, Leah Cully, Phoebe White, Micy Goff, Gracie Watts, Beatrice Watts, Esther Rowe, Monday Jamison, Jeff Murrell, a minor, Percilla Murrell, a minor, Lou Daisy Merrill, a minor, by P. F. Jones, the next friend of said minors; Jim Samuels, Amy Wilson, Thomas Boone, William London, Fred Frowe, Georgia Frowe, Florence McKillop, James McKillop, Martha McKillop, Victoria Davis, a minor, Annie Davis, a minor, by J. M. Glass, the next friend of said minors; Jonnie Brown, Wallace Brown, Nellie Brown, Edward Brown, Russell Brown, Har-y Brown, John Brown, Paul Brown, Rose Manuels, Willie Brown, Robert Brown, Ivy Grayson, Dilsy Hope, Richard Grayson, Mina Byrd, Bettie Tucker, Luther Jones, Robert Jones, Wyatt Jones and Alice Jones, Plaintiffs in Error in the above case and Defendants in Error in the Court below, and would show unto this Honorable Court that in the record and proceedings and in the rendition of the decree in the above cause by the Supreme Court of the State of Oklahoma, in the said suit between the above named Plaintiffs in Error and the above named Defendants in Error, manifest error has occurred, greatly to their damage, whereby petitioners feel aggrieved.

That in the record and proceedings, it will appear that there was drawn in question the validity of a treaty and statute of the United States and the decision was against their validity; that the Federal question particularly involved is that Section 6 of the Supple-

mental Agreement with the Creek Tribe of Indians, which was ratified and confirmed by the Act of Congress approved June 30th, 1902 provides:

[fol. 8a] "That only citizens of the Creek Nation, male and female, and their Creek descendants shall inherit lands of the Creek Nation."

and the validity of this proviso was drawn in question in this cause and the decision of the Supreme Court of the State of Oklahoma was against the validity of this provision; that the action required a decision of the question of who inherited the undivided one-half interest of Gertrude Grayson, a Creek citizen, in certain lands allotted in the name of the heirs of Nancy Colbert and Garfield Colbert, she being one of the heirs. Gertrude Grayson died in April, 1907. Plaintiffs in Error were her nearest heirs who were of Creek descent and they contended that because of the provision above mentioned, they inherited said lands but the Supreme Court of Oklahoma held against this contention and held said provision invalid.

Wherefore, Petitioners pray that their appeal be allowed and that a transcript of the record, proceedings and papers upon which said orders were made, duly authenticated, be ordered sent to the Supreme Court of the United States at Washington, D. C. under the rules of said Court in such cases made and provided, that the same may be inspected and corrected, as according to law and justice should be done.

Jess W. Watts, Charles G. Watts, William Neff, L. E. Neff, Robert M. Rainey, Streeter B. Flynn, Attorneys for Plaintiffs in Error.

Writ of Error allowed as prayed for upon the giving of a bond by Isom Grayson and others in the sum of Two Hundred ($200.00) Dollars.

Dated September 17, 1923.

J. T. Johnson, Chief Justice of the Supreme Court of Okla-
[fol. 9a] homa. Attest: Wm. M. Franklin, Clerk Supreme Court of Oklahoma, By Jessie Pardoe, Deputy. (Seal Supreme Court, State of Oklahoma.)

[fol. 10a] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

[fol. 11a] ASSIGNMENT OF ERRORS—Filed Sept. 18, 1923

Now come the above named Isom Grayson and others, Plaintiffs in Error in the above entitled cause, and file the following assignment of errors, upon which they will rely upon the prosecution

of a writ of error in the above entitled cause to the Supreme Court of the United from the decision and decree made by this Court on the 29th day of May, 1923, which became final on the 3rd day of July, 1923 at which time the petition for re-hearing was denied:

1. The Supreme Court of the State of Oklahoma erred in reversing the judgment of the District Court of Creek County, Oklahoma, with instructions to enter judgment quieting the title of the defendants, James A. Harris and William H. Harris in the lands in controversy in the action.

2. Said Supreme Court of the State of Oklahoma erred in not affirming the judgment of the District Court of Creek County, Oklahoma.

3. The Supreme Court of the State of Oklahoma erred in holding the portion of Section 6 of the Supplemental Agreement with the Creek Tribe of Indians, which was ratified and confirmed by Act of Congress approved June 30, 1902, which provides:

"That only citizens of the Creek Nation, male and female, and their Creek descendants shall inherit lands of the Creek Nation:"

was invalid.

4. The Supreme Court of the State of Oklahoma erred in not holding that by virtue of said provision in Section 6 of said Supplemental Agreement, Plaintiffs in Error inherited, upon the death of Gertrude Grayson in April, 1907, the undivided half interest which she then had in lands allotted to herself and another as heirs of Nancy [fol. 12a] Colbert and Garfield Colbert, these Plaintiffs in Error being her nearest heirs of Creek descent, she having been a Creek citizen and said allotments having been in the Creek Nation.

5. The Supreme Court of the State of Oklahoma erred in holding that in April, 1907, Cloria Grayson, who was not a Creek citizen or a descendant of a Creek citizen, could inherit lands of the Creek Nation, when there were persons of Creek citizenship and descent to take said lands.

Wherefore, the Plaintiffs in Error, above named, who were Defendants in Error in the Supreme Court of the State of Oklahoma, pray that said decree and decision of the Supreme Court of the State of Oklahoma be reversed and the said Court be directed to affirm the judgment of the District Court of Creek County, Oklahoma and for all proper relief.

Robt. M. Rainey, Streeter B. Flynn, Jess W. Watts, Charles G. Watts, William Neff, L. E. Neff, Attorneys for Plaintiffs in Error.

[fol. 13a] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

[fol. 14a] ORDER ALLOWING WRIT OF ERROR—Filed Sept. 18, 1923

On this, the 17 day of September, 1923, came on to be heard the application of Isom Grayson, Micey Keys, Paulina Carolina, Alice Carolina, Bertha Grayson, Gertie Carolina, Polly Grayson, Louisa Williams, Dock Grayson, a minor, Zach Grayson, a minor, by Mont Caroline the next friend of said minors; Della Hutton, Sam Haynes, Alice Hunter, Rose Haynes, Rayford Hutton, Sam Stidham, Letha Stehham, Hattie Givens, George Harrison, Jennie Boyce, a minor, Clarence Boyce, a minor, Lucy Boyce, a minor, Hattie Boyce, a minor, Beatrice Boyce, a minor, by George Harrison the next friend of said minors; Joe McIntosh, Wiley McIntosh, John McIntosh, George McIntosh, Rebecca McIntosh, Elzora Fields, Mammie Davis, Willie Smith, Johanna Smith, Henry Smith, George Smith, Prince Lewis, Eddie Lewis, Sarah Lewis McSwain, Jesse Lewis, Elmore Lewis, a minor, Robert Lewis, a minor, William Lewis, Jr., a minor, Lennie Lewis, a minor by R. J. Dixon, the next friend of said minors; Mary Manuel, Roy McIntosh, Rozanna McIntosh, Berry Friday, Louis Friday, Jack Friday, Bennie Friday, Billy Friday, Katie Harrison, Julia Durant, Edward Friday, Beecher Watley, a minor, Jack Watley, a minor, Beatrice Watley, a minor, Myrtle Wayley, a minor, by Jim Watley, the next friend of said minors, Dorthey Grayson, Billy Grayson, Leona Grayson, Katie Grayson, Lucy Grayson, Janey Grayson, Cooper Grayson, a minor, by Billie Grayson, his next friend, Elsie Edwards, Sam Tobler, Dick Tobler, Roxanna Sneed, Sophia Smith, Sandy Tobler, Lidia Connor, Ben Tobler, Arizona Tobler, Bula Tobler, a minor, Lula Tobler, a minor, Pleas Tobler, a minor, Ida Tobler, a minor, by —— Adams, the next friend of said minors; Mirah Jenkins, Pauline Tobler, Aaron Tobler, Alice McNack, Sandy Grayson, Dick Thursday, Peter Hawkins, Joe [fol. 15a] Hawkins, Sambo Hawkins, Dave Hawkins, Robert Hawkins, Mack Hawkins, Tommy White, Rachie White, Jessie Casey, Galula Hawkins, a minor, by her next friend P. J. Shimm, Patsey Harrison, Rose Corbray, Mary Corbray, Nettie Perry, Esther Lee Parry, Joe Stephens, Morris Stephens, Joe Grayson, Leah Cully, Phoebe White, Micy Goff, Gracie Watts, Beatrice Watts, Esther Rowe, Monday Jamison, Jeff Murrell, a minor, Percilla Murrell, a minor, Lou Daisy Merrill, a minor, by P. F. Jones, the next friend of said minors; Jim Samuels, Amy Wilson, Thomas Boone, William London, Fred Frowe, Georgie Frowe, Florence McKillop, James McKillop, Martha McKillop, Victoria Davis, a minor, Annie Davis, a minor, by J. M. Glass, the next friend of said minors; Jonnie Brown, Wallace Brown, Nellie Brown, Edward Brown, Russell Brown, Har-y Brown, John Brown, Paul Brown, Rose Manuels, Willie Brown, Robert Brown, Ivy Grayson, Dilsy Hope, Richard Grayson, Mima Byrd, Bettie Tucker, Luther Jones, Robert Jones, Wyatt Jones and Alice Jones, Defendants in Error in Case No. 11654

pending in the Supreme Court of the State of Oklahoma, entitled James A. Harris and others, Plaintiffs in Error vs. Isom Grayson and others, Defendants in Error, for a writ of Error to the Supreme Court of the United States, and it appearing to the Court from the petition filed herein and the record filed therewith that the application ought to be granted and that a transcript of the record, proceedings and papers upon which the judgment of the Supreme Court of Oklahoma was rendered, properly certified, should be sent to the Supreme Court of the United States, as prayed for in the petition, that such proceedings may be had as will be just in the premises.

It is therefore ordered that the writ of error be allowed upon said applicants giving bond, conditioned as the law directs, in the sum of Two Hundred ($200.00) Dollars and that a true copy of the [fol. 16a] record, assignment of errors and all proceedings had in the case in the Supreme Court of the State of Oklahoma shall be transmitted to the Supreme Court of the United States, properly certified, as the law requires, that the Court may inspect the same and do what according to law should be done.

J. T. Johnson, Chief Justice of the Supreme Court of the State of Oklahoma. Attest: Wm. M. Franklin, Clerk Supreme Court of Oklahoma, by Jessie Pardoe, Deputy. (Seal of Supreme Court, State of Oklahoma.)

[fol. 17a] [File endorsement omitted]

WRIT OF ERROR—Filed Sept. 20, 1923

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Oklahoma, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Isom Grayson, Micey Keys, Paulina Carolina, Alice Carolina, Bertha Grayson, Gertie Carolina, Polly Grayson, Louisa Williams, Dock Grayson, a minor, Zach Grayson, a minor, by Mont Carolina, the next friend of said minors; Della Hutton, Sam Haynes, Alice Hunter, Rose Haynes, Rayford Hutton, Sam Stidham Letha Stehham, Hattie Givens, George Harrison, Jennie Boyce, a minor, Clarence Boyce, a minor, Lucy Boyce, a minor, Hattie Boyce, a minor, Beatrice Boyce, a minor, by George Harrison, the next friend of said minors; Joe McIntosh, Wiley McIntosh, John McIntosh, George McIntosh, Rebecca McIntosh, Elzora Fields, Mammie Davis, Willie Smith, Johanna Smith, Henry Smith, George Smith, Prince Lewis, Eddie Lewis, Sarah Lewis McSwain, Jessie Lewis, Elmore Lewis, a minor, Robert Lewis, a minor, William Lewis, Jr., a minor, Lennie Lewis, a minor, by R. J. Dixon, the next friend of said minors; Mary

Manuel, Roy McIntosh, Rozanna McIntosh, Berry Friday, Louis Friday, Jack Friday, Bennie Friday, Billy Friday, Katie Harrison, Julia Durant, Edward Friday, Beecher Watley, a minor, Jack Watley, a minor, Beatrice Watley, a minor, Myrtle Wayley, a minor, by Jim Watley the next friend of said minors; Dorthey Grayson, Billy Grayson, Leona Grayson, Katie Grayson, Lucy Grayson, Janey [fol. 18a] Grayson, Cooper Grayson, a minor, by Billie Grayson, his next friend, Elsie Edwards, Sam Tobler, Dick Tobler, Roxanna Sneed, Sophia Smith, Sandy Tobler, Lidia Connor, Ben Tobler, Arizona Tobler, Bula Tobler, a minor, Lula Tobler, a minor, Pleas Tobler, a minor, Ida Tob-er, a minor by —— Adams, the next friend of said minors; Mirah Jenkins, Pauline Tobler, Aaron Tobler, Alice McNack, Sandy Grayson, Dick Thursday, Peter Hawkins, Joe Hawkins, Sambo Hawkins, Dave Hawkins, Robert Hawkins, Mack Hawkins, Tommy White, Rachie White, Jessie Casey, Galula Hawkins, a minor, by her next friend P. J. Shimm, Patsey Harrison, Rose Corbray, Mary Corbray, Nettie Perry, Esther Lee Parry, Joe Stephens, Morris Stephens, Joe Grayson, Leah Cully, Phoebe White, Micy Goff, Gracie Watts, Beatrice Watts, Esther Rowe, Monday Jamison, Jeff Murrell a minor, Percilla Murrell, a minor, Lou Daisy Merrill, a minor, by P. F. Jones, the next friend of said minors; Jim Samuels, Amy Wilson, Thomas Boone, William London, Fred Frowe, Georgie Frowe, Florence McKillop, James McKillop, Martha McKillop, Victoria Davis, a minor, Annie Davis, a minor by J. M. Glass the next friend of said minors; Jonnie Brown, Wallace Brown, Nellie Brown, Edward Brown, Russell Brown, Har-y Brown, John Brown, Paul Brown, Rose Manuels, Willie Brown, Robert Brown, Ivy Grayson, Dilsy Hope, Richard Grayson, Mima Byrd, Bettie Tucker, Luther Jones, Robert Jones, Wyatt Jones and Alice Jones (Defendants in Error in the Supreme Court of Oklahoma) and James A. Harris, William H. Harris, James H. Kennedy, Ohio Cities Gas Company, James Brenn and Jim Colbert (Plaintiffs in Error in the Supreme Court of Oklahoma) wherein was drawn in question the validity of a Statute and Treaty of the United States and the decision was against their validity and wherein the validity of the provision of Section 6 of the Supplemental Agreement with Creek Tribe of Indians, which provides:

[fol. 19a] "That only citizens of the Creek Nation, male and female, and their Creek descendants shall inherit lands of the Creek Nation:"

was drawn in question and the decision was against its validity. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty (30) days from the date hereof, that the record and proceed-

ings aforesaid being inspected, the same Supreme Court may caus
further to be done therein to correct that error, what of right an
according to the laws and customs of the United States, should b
done.

Witness the Honorable William H. Taft, Chief Justice of th
United States, the 17th day of September, 1923.

Harry L. Finley, Clerk of the United States District Court fo
the Western District of Oklahoma. [Seal of the Unite
States District Court, Western District of Oklahoma.]

Writ Allowed this 17 day of September, 1923.

J. T. Johnson, Chief Justice of the Supreme Court of Okl
homa. Attest: Wm. M. Franklin, Clerk Supreme Court
Oklahoma, By Jessie Pardoe, Deputy Clerk. [Seal of th
Supreme Court, State of Oklahoma.]

[fols. 20a-366] In the Supreme Court of the State of Okla
homa

[Title omitted]

Bond on Writ of Error for $200.00— approved and filed Septem
ber 18, 1923; omitted in printing

[fol. a] In the Supreme Court of the United States, Octobe
Term, 1923

[Title omitted]

Designation of Portions of Record to be Printed—Filed Oc
19, 1923

Plaintiffs in Error, Petitioners, contend that the Supreme Court o
the State of Oklahoma erred in holding that any question of secon
descent is involved in the instant controversy and furthermore th
Court erred in holding that the proviso to Section Six (6) of th
Creek Supplemental Agreement does not apply to a second descent

In order to present these points plaintiffs in error and Petitioner
do hereby designate for printing, in accordance with the certificat
of the Chief Justice of the Supreme Court of the State of Oklahoma
which is as follows:

"In the Supreme Court of the State of Oklahoma

No. 11654

James A. Harris et al., Plaintiffs in Error,

vs.

Isom Grayson et al., Defendants in Error

Certificate as to Record

I do hereby certify that the record on which the final opinion in the above cause was based consists of the pleadings and the special findings and judgment of the District Court of Creek County, Oklahoma.

In witness whereof I have set my hand this 25th day of September, 1923.

J. T. Johnson, Chief Justice of Oklahoma Supreme Court. Attest: William M. Franklin, Clerk, By Ruell Haskell, Assistant. (Seal.)"

[fol. b] the following portions of the record, and which are all contained in the printed transcript of record, already on file:

Petition and Exhibits.
Separate Answer of Defendants, William H. Harris and James A. Harris.
Separate Answer of Quaker Oil & Gas Company.
Reply to Answer of Defendants, Harris.
Reply to Answer of Quaker Oil & Gas Company.
Petition of Nellie Harris.
Petition of Elizabeth Randal, et al.
Order Making Elizabeth Randal, et al., Parties Plaintiff.
Reply of Nellie Harris to Answer of William H. Harris, et al.
Answer of Harris to Intervention of Nellie Harris, et al.
Journal Entry of Judgment.
Journal Entry of Judgment—Findings and Decree.
Amendment to Answer of Defendants, Harris.
Petition in Error.
Assignments of Error.
Opinion of Supreme Court of Oklahoma.
Petition for Rehearing.
Petition for Rehearing.
Order denying Rehearing.
Certificate of Chief Justice.
Certificate of Clerk.

Robert M. Rainey; Streeter B. Flynn, William Neff, Lewis Neff, Jess W. Watts, Charels G. Watts, Attorneys for Petitioners and Plaintiffs in Error.

Service acknowledged this 10th day of October, 1923.
Geo. S. Ramsey, Robt. F. Blair, Alvin Richards, Attorneys for Respondents and Defendants in Error.

[fol. c] [File endorsement omitted.]

[fol. d] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1923

[Title omitted]

ADDITIONAL PARTS OF THE RECORD DESIGNATED BY RESPONDENTS TO BE PRINTED—Filed Oct. 18, 1923

It is the contention of respondents that the action of petitioners is barred by the statute of seven years limitation, and that if this Court should grant the writ of certiorari, we believe it would so hold. Therefore, and to the end that this Court may examine and pass on that question, we designate and ask to have printed additional parts of the record which we think material and necessary, as follows, to-wit:

1. Final decree of the District Court of the United States for the Eastern District of Oklahoma, in the consolidated cases of James Brann vs. L. A. Bell, et al., and L. A. Bell, et al., vs. James Brann, as appears in the case-made of the Supreme Court of Oklahoma at pages 550-555.

2. Also decree of said United States District Court made and entered July 31, 1911, as shown in said case-made at pages 556-563.

3. Also deed from James Brann to James A. Harris and others, as appears in said case-made at page 597.

[fol. e] 4. Also deed from Jim Colbert and wife to Willie E. Toomer, dated July 10, 1906, as appears in said case-made at page 669.

5. Also deed from Willie E. Toomer to George C. Butte, dated July 17, 1906, as appears in said case-made at page 672.

6. Also deed from George C. Butte and others to James A. Harris and others, dated September 12, 1912, as appears in said case-made at page 694.

7. Also oil and gas lease from George C. Butte to A. B. Reese, dated August 23, 1906, as appears in said case-made at page 602.

8. Also the deposition of respondents' witness, George C. Butte, as appears in said case-made at pages 648-668.

9. Also deposition of respondents' witness, James Brann, as appears in said case-made at pages 479-487.

It is the further contention of respondents that the petitioners have wholly failed to prove that they, or any of them, are citizens of the Creek Nation or their Creek descendants; but this Court cannot pass upon that question as it ought to do without having before it in the printed record all testimony offered by petitioners in the trial court, which we think is material and necessary, and, therefore, we ask to have the same printed and made part of the record here.

Robt. F. Blair, Geo. S. Ramsey, Attorneys for Respondents, James A. Harris and William H. Harris.

[fol. e½] [Endorsed:] 586—29,896. U. S. Supreme Court. Isom Grayson et al., Petitioners and Plaintiffs in Error, vs. James A. Harris et al., Respondents and Defendants in Error. Additional Parts of the Record Designated by Respondents to be Printed.

[fol. f] [File endorsement omitted.]

[fol. g] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1923

[Title omitted]

SUPPLEMENTAL DESIGNATION OF PORTIONS OF RECORD TO BE PRINTED—Filed Oct. 30, 1923

Plaintiffs in error, Petitioners, supplementing their designation of portions of the record to be printed now on file in this Court, in addition do hereby designate for printing the following portions of the record, to-wit:

Return of Writ;
Citation and service;
Petition for writ of error;
Assignment of errors;
Order allowing writ of error;
Writ of error;
Bond on writ of error.

Robt. M. Rainey, Streeter B. Flynn, William Neff, Attorneys for Plaintiffs in Error and Petitioners.

Service acknowledged this 27 day of October, 1923.

Robt. F. Blair, Geo. S. Ramsey, Attorneys for Defendants in Error and Respondents James Harris, Wm. Harris, and Kennedy.

[fol. g½] [Endorsed:] October Term, 1923. No. 586. In the Supreme Court of the United States. Isom Grayson, et —., Plaintiffs in Error, vs. James A. Harris, et al., Defendants in Error. Sup-

plemental Designation of Portions of Record to be Printed. Rainey and Flynn, Attorneys and Counselors, Insurance Building, Oklahoma City.

[fol. h] [File endorsement omitted.]

Endorsed on cover: File No. 29,896. Oklahoma Supreme Court. Term No. 586. Isom Grayson, Micey Keys, Paulina Carolina, et al., plaintiffs in error, vs. James A. Harris, William H. Harris, James H. Kennedy, et al. Filed October 1st, 1923. File No. 29,896.